**Section 1: 10-K (10-K)** 

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# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

# **FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2018

OR

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

Commission File Number: 001-35155

# **BOINGO WIRELESS, INC.**

(Exact name of registrant as specified in its charter)

DELAWARE

95-4856877

(State of other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

10960 Wilshire Blvd., 23<sup>rd</sup> Floor
Los Angeles, California 90024
(Address of principal executive offices, Zip Code)

(310) 586-5180

(Registrant's telephone number, including area code)

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

Common Stock, \$0.0001 par value (Title of each class) The NASDAQ Stock Market LLC

(Name of each exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act: None

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

Indicate by check mark if the	registrant is not required to file report	ts pursuant to Section 13 or 15(d) of the	Act. Yes □ No 🗷
	r for such shorter period that the regis	ts required to be filed by Section 13 or 1 strant was required to file such reports):	5(d) of the Securities Exchange Act of 1934; and (2) has been subject to such filing
		onically every Interactive Data File requestion on the for such shorter period that the	aired to be submitted pursuant to Rule 405 registrant was required to submit such
			ained herein, and will not be contained, to t III of this Form 10-K or any amendment
	definition of "large accelerated filer,"	filer, an accelerated filer, a non-accelerated reporting a "accelerated filer," "smaller reporting of the state of the sta	ated filer, a smaller reporting company or an company" and "emerging growth
Large accelerated filer <b>区</b>	Accelerated filer □	Non-accelerated filer □	Smaller reporting company □ Emerging growth company □
	any, indicate by check mark if the reging standards provided pursuant to Sect		d transition period for complying with any
Indicate by check mark wheth	ner the registrant is a shell company (a	as defined in Rule 12b-2 of the Exchange	Act). Yes 🗆 No 🗷
Registrant's most recently complete		5,225 based on the last reported sale pric	es of the Registrant as of the last day of the e of \$22.59 per share on the NASDAQ
As of February 22, 2019, there	e were 43,920,669 shares of registrant	s's common stock outstanding.	
	DOCUMENTS INCO	DRPORATED BY REFERENCE	
	finitive Proxy Statement for the Annu porated by reference into Part III of th	nal Meeting of Stockholders to be filed value is Form 10-K where indicated.	vithin 120 days of the Company's year

# BOINGO WIRELESS, INC. ANNUAL REPORT ON FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2018

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# Forward-Looking Statements

We have made forward-looking statements in this Annual Report on Form 10-K that are subject to risks and uncertainties. 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, are subject to the "safe harbor" created by those sections. The forward-looking statements in this report are based on our management's beliefs and assumptions and on information currently available to our management. In some cases, you can identify forward-looking statements by terms such as "anticipates," "aspires," "believes," "can," "continue," "could," "estimates," "expects," "intends," "may," "plans," "projects," "seeks," "should," "will" or "would" or the negative of these terms and similar expressions intended to identify forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors, which may cause our actual results, performance, time frames or achievements expressed or implied by the forward-looking statements. We discuss many of these risks, uncertainties and other factors in this document in greater detail under the heading "Risk Factors." We believe it is important to communicate our expectations to our investors. However, there may be events in the future that we are not able to predict accurately or over which we have no control. The risks described in "Risk Factors" included in this report, as well as any other cautionary language in this report, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Before you invest in our common stock, you should be aware that the occurrence of the events described in "Risk Factors" and elsewhere in this report could harm our business.

Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date of this filing. You should read this document completely and with the understanding that our actual future results may be materially different from what we expect. We hereby qualify our forward-looking statements by these cautionary statements. Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

Unless the context otherwise requires, we use the terms "Boingo," "company," "we," "us" and "our" in this Annual Report on Form 10-K to refer to Boingo Wireless, Inc. and, where appropriate, its subsidiaries.

#### PART I

#### Item 1. Business

# **Company Overview**

Boingo helps the world stay connected to the people and things they love.

We acquire long-term wireless rights at large venues like airports transportation hubs, stadiums/arenas, military bases, multifamily properties, universities, convention centers, and office campuses; we build high-quality wireless networks such as distributed antenna systems ("DAS"), Wi-Fi, and small cells at those venues; and we monetize the wireless networks through a number of products and services.

Over the past 17 years, we've built a global footprint of wireless networks that we estimate reaches more than a billion consumers annually. We operate 58 DAS networks containing approximately 29,900 DAS nodes, and believe we are the largest operator of indoor DAS networks in the world. Our Wi-Fi network, which includes locations we manage and operate ourselves (our "managed and operated locations") as well as networks managed and operated by third-parties with whom we contract for access (our "roaming" networks), includes over 1.2 million commercial Wi-Fi hotspots in more than 100 countries around the world.

We generate revenue from our wireless networks in a number of ways, including our DAS, small cells, multifamily and wholesale Wi-Fi offerings, which are targeted towards businesses, and our military, retail, and advertising offerings, which are targeted towards consumers.

We generate wholesale revenue from telecom operators that pay us build-out fees and recurring access fees so that their cellular customers may use our DAS or small cell networks at locations where we manage and operate the wireless network. In 2018, DAS revenue accounted for approximately 38% of our revenue.

Military/multifamily revenue, which is driven by military personnel who purchase Wi-Fi services on military bases, and multifamily revenue, which is driven by property owners who purchase network installation services and recurring monthly Wi-Fi services and support, accounted for approximately 31% of our total revenue in 2018. As of December 31, 2018, we have grown our military subscriber base to approximately 138,000, an increase of approximately 6.2% over the prior year. Retail revenue, which is driven by consumers who purchase a recurring monthly subscription plan or one-time Wi-Fi access, accounted for approximately 7% of our total revenue in 2018. As of December 31, 2018, our retail subscriber base was approximately 122,000, a decrease of approximately 35.1% over the prior year.

Our wholesale customers such as telecom operators, cable companies, technology companies, and enterprise software/services companies, pay us usage-based Wi-Fi network access and software licensing fees to allow their customers' access to our footprint worldwide. Wholesale Wi-Fi revenue also includes financial institutions and other enterprise customers who provide Boingo as a value-added service for their customers. In 2018, wholesale Wi-Fi revenue accounted for approximately 19% of our revenue.

We also generate revenue from advertisers that seek to reach consumers via sponsored Wi-Fi access. In 2018, advertising and other revenue accounted for approximately 5% of our revenue.

Our customer agreements for certain DAS networks include both a fixed and variable fee structure with the highest percentage of sales typically occurring in the fourth quarter of each year and the lowest percentage of sales occurring in the first quarter of each year. Our multifamily network installation services have historically been performed for the student housing market with the highest percentage of revenues typically occurring in the second and third quarter of each year. We expect these trends to continue. We do not expect significant seasonal impact for any of our other products.

We were incorporated in the State of Delaware in April 2001 under the name Project Mammoth, Inc. and changed our name to Boingo Wireless, Inc. in October 2001. Our principal executive offices are located in Los Angeles, California. Our website address is www.boingo.com. The information on, or that can be accessed through, our website is not part of this Annual Report on Form 10-K.

#### **Industry Overview**

Today, consumers own multiple connected devices—smartphones, laptops, tablets, wearables, and more. In addition, mobile data growth is exploding, driven by the growth of wireless devices and the increase in high-bandwidth activities like video streaming, online gaming, and mobile apps. According to Cisco's 2018 Visual Networking Index ("CVNI"), global mobile data traffic is forecasted to grow seven-fold from 2017 to 2022, a compound annual growth rate of 46%. CVNI further estimates that by 2022, there will be 3.6 "connected" devices for every human on the planet. That means 28.5 billion networked devices by 2022.

The mobile data explosion has fueled the growth of higher-generation network connectivity to address the demand for more bandwidth, higher security, and faster connectivity. Telecom operators have started trials for 5G, which will provide higher bandwidth (greater than 1 gigabit per second),

broader coverage, and ultra-low latency. Significant 5G deployments are expected by 2020 subject to certain gating factors like standards development, regulatory approval, and spectrum availability.

# **Challenges Facing Our Industry**

The mobile Internet is a complex and constantly evolving ecosystem comprised of dozens of manufacturers, many different operating systems, and a number of different wireless technologies utilizing both licensed and unlicensed spectrum. This complexity is amplified as new device models and operating systems are released, new categories of devices become Internet enabled, and new network technologies emerge.

To cope with the significant increase in mobile Internet data traffic, wireless network operators must build denser networks that are closer to the end consumer, explore solutions to offload network traffic from congested, licensed spectrum onto more efficient unlicensed spectrum, and invest in technologies that will enable the convergence of licensed and unlicensed spectrum. We expect our wireless networks to play a significant role in helping meet the ever-increasing data demands of connected consumers.

# **Our Strategy**

We believe we are the leading global provider of neutral-host commercial mobile Wi-Fi Internet solutions and indoor DAS services. Our overall business strategy is simple: acquire long-term wireless rights at large venues; build high-quality wireless networks at those venues; and monetize the wireless networks through a number of products and services. In support of our overall business strategy, we are focused on the following objectives:

- Expand our footprint of managed and operated and aggregated networks. We intend to continue to grow our global network of managed and operated DAS, Wi-Fi and small cell networks. We focus our venue acquisition strategy on locations with a common profile—large venues with significant population density—as these venues face challenges that we are uniquely qualified to solve. We also plan to enter into new roaming agreements with network operators to maximize the reach of our aggregated network, which creates a more attractive offering for our wholesale enterprise, multifamily, military, and retail customers.
- Leverage our neutral-host business model to grow DAS, small cell, and wholesale roaming partnerships. Our neutral-host model enables us to effectively partner with venues because we ensure all customers receive high-quality wireless service. We successfully balance the interests of individual carriers with the goals of our venue partners and build flexible DAS network architectures that can support multiple carriers and the latest mobile services. We are also beginning to deploy small cell networks, and we believe this technology will enable us to expand into certain venues where a traditional DAS network is cost-prohibitive.
- Expand our carrier offload relationships. As cellular networks become strained due to capacity, carriers are beginning to offload their licensed mobile traffic onto unlicensed spectrum. We are highly focused on partnering with all four Tier 1 carriers in the U.S. and other carriers around the world to offload their mobile traffic onto our Wi-Fi networks.
- *Increase our brand awareness.* We intend to continue to seek new ways to promote our brand through our managed and operated hotspots. We plan to enhance our brand through low-cost co-marketing arrangements with our partners and through periodic promotional and sponsorship activities and by continuing to leverage the reach of social media and public relations to interact with our customers.

#### **Services**

Our solution makes it easy, convenient and cost effective for consumers to access the mobile Internet.

DAS or Small Cell. We offer our telecom operator partners access to our DAS or small cell networks at our managed and operated locations. We deploy our DAS or small cell networks within venues that require additional signal strength to improve the quality of cellular services.

*Military/Multifamily*. We provide high-speed Wi-Fi services for residential consumers on military bases and at multifamily properties. On military bases, where we are the leading provider of barracks Wi-Fi services at more than 60 U.S. Army, Air Force, and Marines bases, we offer direct-to-consumer transactional and recurring monthly subscription plans. Our plan offerings include Basic Internet (speeds up to 10Mbps) and Blazing Internet (speeds up to 50Mbps). Our subscription plans require no installation or equipment and are portable from base to base, enabling a user to sign up for service immediately and remain a customer even if they are deployed to a new base. At multifamily properties, we primarily offer bulk subscription plans sold directly to the property owner. Our multifamily footprint includes 225 properties throughout the U.S.

Wholesale—Wi-Fi. Our integrated hardware and software platform allows us to provide a range of enhanced services to network operators, device manufacturers, technology companies, enterprise software and services companies, venue operators and financial services companies.

- Carrier offload services. We offer services to carriers to move traffic from their licensed cellular networks onto our Wi-Fi networks.
- Comes with Boingo. We offer access to our entire network of over 1.2 million hotspot locations to financial institutions and other enterprise customers who then offer them as a loyalty incentive to their customers.
- Wi-Fi roaming and software services. We offer roaming services across our entire network of over 1.2 million hotspot locations to our partners who can then provide mobile Internet services to their customers at these locations. Our software solution, which provides one-click access to our global footprint of hotspots, has been rebranded for wholesale partners, in addition to being marketed under the Boingo brand. In combination with our back-end system infrastructure, it creates a global roaming solution for operators, carriers, other service providers and other businesses.
- *Turn-key solutions*. We offer our venue partners the ability to implement a turn-key Wi-Fi solution through a Wi-Fi network infrastructure that we install, manage and operate. Our turn-key solutions include a variety of service models that are supported through a mix of wholesale Wi-Fi, military, retail, and advertising revenue.

Retail. We enable individuals to purchase Internet access at our managed and operated hotspots and select partner locations around the world. We offer a selection of recurring monthly subscriptions and single-use access plans. Our most common plan is the \$14.99 monthly subscription for up to four connected devices that provide users access to a global footprint of over 1.2 million hotspots, and the single-use plan at \$7.95 per day or \$4.95 per hour. Our single-use access plans provide unlimited access on a single device at a specific hotspot for a defined period of time, tolled from the time the user first logs on to the network. We intend to continue to launch other flexible plans to meet the evolving needs of our customers and venues.

Advertising. Our Wi-Fi platform provides a valuable opportunity for advertisers to reach consumers with sponsored Wi-Fi access, promotional programs and display advertising. We provide brands and advertisers the opportunity to sponsor wireless connectivity to individuals at locations where

we manage and operate the Wi-Fi network and locations where we solely provide authorized access to a partner's Wi-Fi network through sponsored access and promotional programs. In addition, our advertising solution is easily integrated into Wi-Fi networks not directly managed by Boingo.

#### **Our Network**

Over the past 17 years, we've built a global network of wireless networks that we estimate reaches more than a billion consumers annually. We operate 58 DAS networks containing 29,900 DAS nodes, and believe we are the largest operator of indoor DAS networks in the world. Our Wi-Fi network—which includes our managed and operated locations and our roaming networks—includes over 1.2 million commercial Wi-Fi hotspots in more than 100 countries around the world.

Boingo hotspot locations by region as of December 31, 2018 included:

			Convention			
Region	Airport	Café / Retail	Center	Hotel	Other(1)	Total
North America	61	101,018	172	3,126	131,561	235,938
Latin America	90	5,316	13	253	6,855	12,527
Europe, Middle East and Africa	266	40,181	380	10,648	44,482	95,957
Asia	274	244,981	1,675	40,719	598,363	886,012
Total	691	391,496	2,240	54,746	781,261	1,230,434

(1) Includes schools and universities, offices, hospitals and public spaces.

We also operate Wi-Fi networks at over 60 U.S. Army, Air Force, and Marine bases around the world and 225 multi-dwelling properties including student housing, condominiums, apartments, senior living, and hospitality properties throughout the U.S.

#### **Marketing and Business Development**

Our marketing and business development efforts are designed to cost effectively expand our footprint of venues where we can deploy DAS, Wi-Fi and small cell networks, secure more carrier contracts, attract and retain new multifamily, military and retail customers, and identify business partners that could leverage our network to provide mobile Internet services to their customers. We focus on efficient customer acquisition through our online presence, social media, public relations, influencer marketing, experiential and event marketing, market research, and other promotional activities.

We seek to maximize customer lifetime value by managing subscriber acquisition cost, extending customer life and determining appropriate pricing. We use information about subscriber behavior to help us retain customers and determine premium offerings. Our segmentation is focused at the product level, so that we provide the right product, plan and price for our military and retail customers. Our consumer plans are available for essentially all Wi-Fi enabled devices and are priced on a month-to-month or per-use basis.

We issue regular press releases announcing important partnerships and product developments and continually update our website with information about our network and services. We leverage our social media accounts, website and blog to further promote Boingo's product availability and applicability for property owners, military personnel, travelers, digital elite and consumers on-the-go. Our executive team speaks at industry events, trade shows and conferences.

#### **Development**

Our development efforts are focused primarily on supporting our networks and the businesses that run across these networks. These efforts include developing web applications for ease of connecting to our managed and operated locations and aggregate partner networks, integrating our software client with our wholesale partners, continuing to adapt our technology to new operating systems and platforms, continuing to develop an advertising system and business and operations support system for monetizing network service, continuing to develop a platform for delivering television services to our military bases and optimizing our networks and backend systems for roaming and carrier offload. Our development model is based on Agile development practices so any deviations can be promptly corrected to improve reliability in our network or services and enhance customer satisfaction.

#### **Technology**

Over the past 17 years, we have developed proprietary systems that include the Boingo software client and software development kit ("SDK"); authentication, authorization and tracking systems; mediation and billing systems; television management and delivery platform; free user monetization media and advertising platform; and a real-time operational support and software configuration and messaging infrastructure.

Boingo Software Client and SDK

The Boingo software client and SDK are installed on Wi-Fi enabled devices such as smartphones, laptops and tablets to enable our customers and our partners' customers to access our network. The key features of the Boingo software client include:

- Simple user interface. The Boingo software client provides individuals with an uncomplicated, user-friendly interface designed to streamline the Wi-Fi network connection process. The software finds hotspots and monitors the availability of Wi-Fi hotspots in the Boingo network, presents a notification message of the hotspot identified and allows one-click user connections. In some devices, connection to a Boingo Wi-Fi hotspot occurs in the background, providing the user with a seamless, notification-free connectivity experience.
- Support for all major operating system platforms. The Boingo software client and SDK support the Android, iOS, Mac OS and Windows operating systems, which represents the majority of all devices connecting to our managed and operated venues.
- Automatic updates. The Boingo software client automatically receives identification information for new hotspot locations as they are added to the Boingo network, including any information needed to automatically identify and login to the network. Location information, allowing a user to find Boingo hotspots from the client, is also automatically updated. On all but embedded platforms, software updates are also automatically offered to a user when available.
- Custom branding and flexible integration alternatives. We offer wholesale customers the ability to integrate the Boingo software client into their products and services as a SDK. Additionally, we offer wholesale customers the option to utilize a custom, rebranded reference design of the software client used in our retail customer offering.

Authentication, Authorization and Tracking System

Our proprietary authentication, authorization and tracking system enables the reliable, scalable and secure initiation and termination of user Wi-Fi sessions on our network. This system authenticates our network users across a wide variety of hotspots and network operators, through a normalized authentication protocol. Through the authorization process, custom business rules ensure user access based on specific service parameters such as location, type of device, service plan and account

information. Our system also captures duration, data traffic, location, and type of device. We normalize and process this data from disparate providers for our use and for our wholesale partners. This system has been enhanced to include support for secure Next Generation Hotspot roaming, which leverages Passpoint-certified devices and network hardware to establish seamless secure connections for customers.

Mediation and Billing System

Our mediation and billing system record and analyzes individual usage sessions required to bill for Wi-Fi usage. Users are charged based on variables such as pricing plan, device type, location, time and amount of use. Our system consolidates usage session information, determines the user identity and applies the appropriate aggregation and flagging to ensure proper usage processing. Our system handles exceptions automatically. Exceptions that cannot be solved automatically are brought to the attention of the operations staff for rectification of any discrepancies. The billing system provides billing based on roaming relationship, user type, device type and account type. Our military and retail customer mediation and billing are handled by the same infrastructure used for wholesale customer and billing, resulting in efficiencies of scale and operation.

Television Management and Delivery Platform

Our television system enables us to deliver content to our military subscribers. The Boingo digital rights management ("DRM") system allows for live linear commercial content to be delivered securely through our encrypted network links that connect our primary data center and the military bases. The central content management system allows for regional content delivery and multiple programming bundle offers. To enhance the viewing experience for mobile and tablet devices, the Boingo delivery system uses HTTP Live Streaming distribution protocol that will accommodate playing content at different network speeds by dynamically reducing content size.

Free User Monetization Media and Advertising Platform

The Boingo Media platform enables brand advertisers to reach a captive audience through high engagement Wi-Fi sponsorships in premium locations worldwide. It delivers engaging advertising experiences, and our partners can place their messaging in the right context to their target audience. It also allows a combination of branding with direct response in a single high-impact format. Frequent travelers can be reached in a way they appreciate—by receiving free Wi-Fi access when they need it most.

Software Configuration and Messaging System

Our software configuration system provides real-time network configuration updates for thousands of networks and many detection and login methodologies used by the Boingo software client to access our network. Our software configuration system automatically registers new network definitions and login methodologies to allow individuals to connect to our hotspot locations. All supported platforms use a single configuration, providing a high level of operational and test efficiency. Our messaging system enables real-time customer notification and system interaction at login, based on location, network, user, account type, device and usage. This approach enables us and our partners to deliver custom marketing or service messages.

#### **Operations**

We provide significant operational support for our managed and operated wireless infrastructure and the related technical systems in our network. For our managed and operated networks, we design, build, monitor and maintain the network. For roaming partners, we monitor network and related

system uptime and report issues so that they can be quickly remedied. We have service level agreements with our roaming partners specifying minimum network uptime requirements and specified quality of service levels for different services that run across the wireless network infrastructure.

Our Wi-Fi deployments are based on the IEEE 802.11a, b, g, n and ac standards and operate in the 2.4 GHz and 5 GHz unlicensed spectrum bands. We design, build, and operate DAS and small cell networks that currently provide 2G, 3G, and 4G-LTE services and expect to start deploying 5G across multiple licensed-frequency bands for all major telecom operators.

#### Customers

We generate revenue primarily from our wholesale partners (including DAS customers), multifamily, military and retail customers. Our DAS customers are telecom operators who pay us one-time build-out fees and recurring access fees for our DAS network, enabling their cellular customers to access these networks. Our wholesale Wi-Fi customers pay usage-based network access fees to allow their customers access to our global Wi-Fi network and other wholesale Wi-Fi partners pay us to provide Wi-Fi services in their venue locations under a service provider arrangement. Our multifamily customers are property owners who pay us to provide Wi-Fi services including network installation services, and to provide support to their residents and employees at their properties. Our wholesale customer relationships are generally governed by multi-year contracts. We acquire our wholesale customers through our business development efforts. Our military and retail customers either purchase month-to-month subscription plans that automatically renew, or single-use access to our network. We acquire our military and retail customers primarily from users passing through our managed and operated locations, where we generally have exclusive multi-year agreements. We also generate revenue from advertisers that seek to reach visitors seeking Wi-Fi access at our managed and operated network locations with online advertising, promotional and sponsored programs. For the years ended December 31, 2018 and 2016, entities affiliated with Sprint Corporation accounted for 14%, 11% and 11%, respectively, of total revenue. For the years ended December 31, 2018 and 2017, entities affiliated with Verizon Communications Inc. accounted for 11% and 11%, respectively, of total revenue. For the years ended December 31, 2018 and 2017, entities affiliated with Verizon Communications Inc. accounted for 11% and 12%, respectively, of total revenue. The loss of these groups and the customers could have a material adverse impact on our consolidated statements of opera

#### **Kev Business Metrics**

In addition to monitoring traditional financial measures, we also monitor our operating performance using key performance indicators. Our key performance indicators follow:

	Year	Year Ended December 31,			
	2018	2017	2016		
		(in thousands)			
DAS nodes	29.9	23.5	19.2		
Subscribers—military	138	130	107		
Subscribers—retail	122	188	195		
Connects	277,744	223,960	142,802		

DAS nodes. This metric represents the number of active DAS nodes as of the end of the period. A DAS node is a single communications endpoint, typically an antenna, which transmits or receives radio frequency signals wirelessly. This measure is an indicator of the reach of our DAS network.

Subscribers—military and Subscribers—retail. These metrics represent the number of paying customers who are on a month-to-month subscription plan at a given period end.

Connects. This metric shows how often individuals connect to our global Wi-Fi network in a given period. The connects include wholesale and retail customers in both customer pay locations and customer free locations where we are a paid service provider or receive sponsorship or promotion fees. We count each connect as a single connect regardless of how many times that individual accesses the network at a given venue during their 24-hour period. This measure is an indicator of paid activity throughout our network.

#### **Customer Support**

We provide support services to our multifamily, military, retail, and enterprise customers 24 hours per day, 7 days per week, 365 days per year. Support is available by phone, chat, email, or social media channels like Twitter and Facebook. Our website contains a comprehensive knowledge base that includes answers to frequently asked questions for self-help, and we provide video support on our YouTube channel. Tier 1 support is provided by a third-party provider, while Tier 2 and social media support is managed by our internal customer care team.

# Competition

The market for mobile Internet services and solutions is fragmented and competitive. We believe the principal competitive factors in our industry include the following:

- price;
- quality of service;
- venue exclusivity;
- ease of access and use:
- bundled service offerings;
- geographic reach; and
- brand name recognition.

Direct and indirect competitors include telecom operators, cable companies, self-managed venue networks and smaller wireless Internet service providers. Some of these competitors have substantially greater resources, larger customer bases, longer operating histories and greater name recognition than we have. They may offer bundled data services with primary service offerings that we do not generally offer such as landline and cellular telephone service, and cable or satellite television. Many of our competitors are also partners from whom we receive revenue when their customers access our network.

We believe that we compete favorably based on our ability to deliver end-to-end solutions, our neutral host business model, deep domain experience in licensed and unlicensed spectrum technology, brand recognition, geographic coverage, network reliability, quality of service, ease of use, and cost.

# **Intellectual Property**

Our ongoing success will depend in part upon our ability to protect our core technology and intellectual property. To accomplish this, we rely on a combination of intellectual property rights, including trade secrets, patents, copyrights and trademarks, as well as contractual restrictions.

We have eight issued U.S. patents, which expire between in 2022 and 2034. We have two patent applications pending in the United States and one patent application pending in Europe. We have two

issued Japanese patents and two issued Chinese patents, each of which has a maximum term that expires in 2027.

Our registered trademarks in the United States and the European Union include "Boingo" and "Boingo Wi-Finder", and in the United States, "Boingo Broadband", "Cloudnine 9 Media", and "AWG-WIFI". We own additional registrations and have filed other trademark applications in the United States and other countries.

In addition to the foregoing protections, we control access to, and use of, our proprietary software and other confidential information through the use of internal and external controls, including contractual protections with employees, contractors, customers and partners. Our software is protected by United States and international copyright laws.

# **Employees**

As of December 31, 2018, we had 463 employees, including 204 in operations, 118 in development and technology, 85 in sales and marketing and 56 in general and administrative. All of our employees are full-time employees except for three part-time employees. We have ten international employees who are covered by a collective bargaining agreement. We have never experienced any employment related work stoppages and consider relations with our employees to be good. As of December 31, 2018, we also had arrangements with third-party call center providers that provided us with 58 full-time equivalent contractors for multifamily, military, retail and enterprise customer support service and similar functions.

## Corporate Responsibility and Sustainability

We understand that long-term value creation for shareholders is our core responsibility. We also have an important role to play for our team members, our customers, and the communities we serve and believe that enriching and enabling the lives of our employees and their families, supporting our environment, caring for our communities, and being good corporate stewards over Boingo is fundamental to our culture, and is just plain good business.

# Employee Well-Being

- *Financial well-being*. We offer an incredible benefits package that includes equity, competitive pay, a quarterly or annual incentive plan, and a defined contribution savings plan with an employer match, among other health-related and other benefits.
- Retirement planning. To help prepare our employees for retirement, our defined contribution savings plan is opt-out, so employees are automatically enrolled in the program when they are hired, unless they actively decline. This behavioral approach means that a significant majority of all of our employees are actively saving for retirement and receiving a company match that is paid each pay period.
- Financial literacy. We conduct financial literacy trainings throughout the year. Seminars have included retirement planning, managing student loan debt, and first-time homebuyer education. Our equity and defined contribution savings plan partners also offer monthly webinars, online planning tools and one-on-one consultations.
- Matching grant program. Our Matching Grant Program amplifies employees' cash contributions to the charitable organization of their choice.
- *Tomorrow's workforce*. We work with community organizations to help develop the tech pipeline talent. Organizations we actively support include the Bixel Exchange Tech Talent Pipeline,

Exceeding Expectations, Girls Who Code, Kid City/Urban Foundation, Los Angeles, and Path Forward.

We have been named one of the Best Places to Work in Los Angeles—four years running. Our high scores in corporate culture, leadership, and training and development reflect our commitment to create a great work environment for our employees.

#### Environment

- Going green. We continually strive to improve operations and minimize our impact on the environment. Business Intelligence Group ("BIG") recently named Boingo "Green Company of the Year" in their "BIG Awards for Business."
- Certifications. We are certified by the City of Los Angeles as a Green Business, meeting sustainability standards set by the City of Los Angeles and the California Green Business Network. The certification was based on a proprietary scoring system used to measure a company's achievements. We were selected for offering e-cycling programs, investing in sustainable business practices, and offering a transportation reimbursement program that rewards employees for going green.

# Diversity

• A culture of inclusion and programs. At Boingo, we believe that fostering a diverse and inclusive culture where all employees can succeed is important to our business. We participate in the Digital Diversity Networks' Innovation and Inclusion Awards and we are a two-time winner. We are a founding member of LightReading's Women in Comms, a platform that empowers women to champion change and redress the gender imbalance in the workplace. We host Center for Excellence in Engineering and Diversity programs that help educationally underrepresented students achieve success in math, science and engineering. Women of Boingo is an employee club that celebrates diverse talents and is dedicated to empowering women to follow a fulfilling career through education, networking and mentoring opportunities.

#### Governance

- Good governance. We endeavor to improve corporate governance and executive compensation and practices and have recently
  implemented various changes to our corporate governance practices.
- Adopted stock ownership guidelines. We adopted stock ownership guidelines to reinforce our belief that executives who believe in the future of the Company should have meaningful equity holdings in Boingo.
- Adopted majority voting standard in uncontested elections. We have implemented a majority voting standard in uncontested elections of
  director. We have also implemented a majority voting policy for director resignations, applicable if an incumbent director nominee receives
  less than a majority of votes cast in an uncontested election.
- Declassified Board. Commencing with the 2018 annual meeting of stockholders, director nominees are reelected for a term of one year, but directors elected prior to the 2018 annual meeting of stockholders will continue to serve the remainder of their terms. Therefore, at the 2020 annual meeting of stockholders, all directors who are elected will be elected for a one-year term.

Further information on our corporate governance policies and programs can be found on the Investor Relations section of our website at <a href="http://www.boingo.com">http://www.boingo.com</a>. The information on, or that can be accessed through, our website is not part of this Annual Report on Form 10-K.

#### **Available Information**

Our filings with the United States Securities and Exchange Commission or SEC, including this Annual Report on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K are available free of charge through the Investor Relations section of our website at <a href="http://www.boingo.com">http://www.boingo.com</a> and are accessible as soon as reasonably practicable after being electronically filed with or furnished to the SEC. The information on, or that can be accessed through, our website is not part of this Annual Report on Form 10-K.

Copies of this report are also available free of charge from Boingo Corporate Investor Communications, 10960 Wilshire Boulevard, 23<sup>rd</sup> Floor, Los Angeles, California 90024. In addition, our Corporate Governance Guidelines, Code of Business Conduct and Ethics and written charters of the committees of the Board of Directors are accessible through the Corporate Governance tab in the Investor Relations section of our website and are available in print to any stockholder who requests a copy. The SEC maintains a website that contains reports and other information we file, and proxy statements to be filed with the SEC. The address of the SEC's website is <a href="http://www.sec.gov">http://www.sec.gov</a>.

#### Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this report on Form 10-K, including our accompanying consolidated financial statements and the related notes, before deciding whether to purchase shares of our common stock. If any of the following risks actually occur, our business, financial condition, results of operations and prospects could be materially and adversely affected. The price of our common stock and the trading price of our Convertible Notes could decline, and you could lose part or all of your investment.

#### **Risks Related to Our Business**

A significant portion of our revenue is dependent on our relationships with our venue and network partners, and if these relationships are impaired or terminated, or if our partners do not perform as expected, our business and results of operations could be materially and adversely affected.

We depend on our relationships with venue partners, particularly key venue partners and military bases, in order to manage and operate DAS, small cell, and Wi-Fi networks. These relationships generate a significant portion of our revenue and allow us to generate wholesale revenues and new multifamily, military, and retail customers. Our agreements with our venue partners, telecom operators, and wholesale customers are for defined periods and of varying durations. In order to maintain our relationships with venue partners, we may need to upgrade our networks or make other changes to our products and services we provide such venue partners, which would, in most cases, require significantly higher initial capital expenditures than we have historically incurred, and if we are unsuccessful, our relationships could be impaired. If our venue partners terminate or fail to renew these agreements, our ability to generate and retain wholesale, multifamily, military, and retail customers would be diminished, which might result in a significant disruption of our business and adversely affect our operating results. Further, any delays in our ability to complete the upgrade of our networks or build-out new networks can adversely affect our operating results.

We depend on our relationships with network partners to allow users to roam across networks that we do not manage or operate. A significant portion of our revenue depends on maintaining these relationships with network partners. Some network partners may compete with us for retail customers

and may decide to terminate our partnerships and instead develop competing retail products and services. Our network partner agreements are for defined periods and of varying durations. If our network partners terminate these agreements, or fail to renew these agreements, our ability to retain retail customers could be diminished and our network reach could be reduced, which could result in a significant disruption of our business and adversely affect our operating results.

Our operating results may fluctuate unexpectedly, which makes them difficult to predict and may cause us to fail to meet the expectations of investors, adversely affecting our stock price.

We operate in a highly dynamic industry and our future quarterly operating results may fluctuate significantly. Our revenue and operating results may vary from quarter-to-quarter due to many factors, many of which are not within our control. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Further, it is difficult to accurately forecast our revenue, margin and operating results, and if we fail to match our expected results or the results expected by financial analysts, the trading price of our common stock and Convertible Notes and the price at which our convertible noteholders could sell the common stock received upon conversion of the Convertible Notes may be adversely affected.

Factors that contribute to fluctuations in our operating results from quarter-to-quarter include those described in this risk factor section including:

- our gain or loss of a key venue partner, military partner, or wholesale partner;
- the rate at which individuals adopt and continue to use our solutions;
- the timing and success of new technology introductions by us or our competitors;
- the number of air travel passengers;
- the growing prevalence of free Wi-Fi models and our ability to adapt and compete with free Wi-Fi;
- intellectual property disputes; and
- general economic conditions in our domestic and foreign markets.

Due to these and other factors, quarter-to-quarter comparisons of our historical operating results should not be relied upon as accurate indicators of our future performance.

A substantial portion of our business depends on the demand for our DAS and small cell networks, which is driven primarily by demand from our telecom customers and demand for data, and we may be adversely affected by any slowdown in such demand. A reduction in the amount or change in the mix of network investment by our telecom customers may materially and adversely affect our business (including reducing demand for tenant additions or network services).

Customer demand for our DAS and small cell networks depends on the mix of network investment by our telecom customers and the demand for data from end users. The willingness of our customers to utilize our systems, including DAS and small cell networks, or renew or extend existing contracts on our systems, is affected by numerous factors, including:

- availability or capacity of our DAS and small cell networks;
- location of our DAS and small cell networks;
- financial condition of our customers, including their profitability and availability or cost of capital;

- willingness of our customers to maintain or increase their network investment or changes in their capital allocation strategy;
- consumers' and organizations' demand for data;
- need for integrated networks and organizations;
- availability and cost of spectrum for commercial use;
- increased use of network sharing, roaming, joint development, or resale agreements by our customers;
- mergers or consolidations by and among our customers;
- changes in, or success of, our customers' business models;
- governmental regulations and initiatives, including local or state restrictions on the proliferation of communications infrastructure;
- cost of constructing our DAS and small cell networks;
- our market competition;
- technological changes, including those (1) affecting the number or type of communications infrastructure needed to provide data to a given geographic area or which may otherwise serve as substitute or alternative to our communications infrastructure or (2) resulting in the obsolescence or decommissioning of certain existing wireless networks; and
- our ability to efficiently satisfy our customers' service requirements.

A slowdown in demand for our DAS and small cell networks or data generally may negatively impact our growth or otherwise have a material adverse effect on us. If our customers or potential customers are unable to raise adequate capital to fund their business plans, as a result of disruptions in the financial and credit markets or otherwise, they may reduce their spending, which could adversely affect our anticipated growth or the demand for our DAS and small cell networks.

The amount, timing, and mix of our customers' network investment is variable and can be significantly impacted by the various matters described in these risk factors. Changes in customer network investment typically impact the demand for our DAS and small cell networks. As a result, changes in customer plans such as delays in the implementation of new systems, new and emerging technologies, or plans to expand coverage or capacity may reduce demand for our DAS and small cell networks. Furthermore, the industries in which our customers operate (particularly those in the wireless industry) could experience a slowdown or slowing growth rates as a result of numerous factors, including a reduction in consumer demand (including demand for wireless connectivity) or general economic conditions. There can be no assurances that weakness or uncertainty in the economic environment will not adversely impact our customers or their industries, which may materially and adversely affect our business, including by reducing demand for DAS and small cell networks. Such an industry slowdown or a reduction in customer network investment may materially and adversely affect our business.

We may be unsuccessful in expanding into new venue types, which could harm the growth of our business, operating results and financial condition.

We are negotiating with existing and prospective partners to expand our managed and operated Wi-Fi network and small cell footprint in venue types where we historically have had only a limited presence. Expansion into these venue types, which may include shopping malls, stadiums, hospitals, retail stores and quick service restaurants, may require significantly higher initial capital expenditures than we have historically incurred. In contrast to Wi-Fi network build-outs at venues such as airports,

where telecom operators typically pay the substantial expense of laying cable or fiber, we may be required to incur the initial capital expense of access points and related hardware and cabling at tens of thousands of quick serve restaurant locations and hundreds of shopping malls, hospitals, retail stores and stadium locations. Additionally, in August 2018 we closed the acquisition of substantially all of the assets of Elauwit Networks, LLC for our entrance into the multifamily venue type. We have minimal experience in servicing the multifamily venues and we may not be successful in growing and managing this business.

We may not be able to execute on our strategy or there may not be returns on these investments in the near future or at all. As a result, our business, financial condition and results of operations could be materially and adversely affected.

Our business depends upon demand for connected services that rely on wireless network infrastructure. Our ability to adapt to the speed of changes and anticipate market adoption of new technologies may adversely impact our business.

Our future success depends upon growing demand for wireless connected services. The demand for wireless connectivity may decrease or may grow more slowly than expected. Any such decrease in the demand or slowing rate of growth could have a material adverse effect on our business. The continued demand for wireless connectivity services depends on the continued proliferation of smartphones, tablets and other wireless connection enabled devices. Our revenue is derived from the demand from consumers for internet connectivity, including our military and retail offerings, and from our telecom, venue, multifamily, and other wholesale partners attempting to provide consumers with greater connectivity. We may face challenges as we seek to increase the revenue generated from the usage on smartphones, tablets and other wireless connected devices.

A portion of our business depends on the continued integration of Wi-Fi as a standard feature in wireless connected devices. If Wi-Fi ceases to be a standard feature in wireless connected devices, or if the rate of integration of Wi-Fi on devices decreases or is slower than expected, the market for our services may be substantially diminished.

Competing technologies pose a risk to the continued use of Wi-Fi as a mobile wireless connectivity technology. The introduction and market acceptance of emerging wireless technologies such as 4G/LTE, 5G, LTE-U and Super Wi-Fi, could cause significant disruption to our Wi-Fi business, which may result in a loss of customers, users and revenue. If users find emerging wireless technologies to be sufficiently fast, convenient or cost effective, we may not be able to compete effectively, and our ability to attract or retain users will be impaired. Additionally, one or more of our partners may deploy emerging wireless technologies that could reduce the partner's need to work with us and may result in significant loss of revenue and reduction of the Wi-Fi hotspots in our network.

We deliver value to our users by providing simple access to Wi-Fi hotspots, regardless of whether we manage and operate the hotspot, or the hotspot is operated by a partner. As a result, our business depends on our ability to anticipate and quickly adapt to changing technological standards and advances. If technological standards change and we fail to adapt accordingly, our business and revenue may be adversely affected. Furthermore, the proliferation of new mobile devices and operating platforms poses challenges for our research and development efforts. If we are unable to create simple solutions for a particular device or operating platform, we will be unable to effectively attract users of these devices or operating platforms and our business will be adversely affected.

# We may not maintain recent rates of revenue growth.

Although our revenue has increased substantially over the last few years, we may not be able to maintain historical rates of revenue growth. We believe that our continued growth will depend, among other factors, on successfully implementing our business strategies, including our ability to:

- retain our existing partners and attract new partners;
- develop new sources of revenue from our users and partners;
- attract new users and keep existing subscribers actively using our services;
- react to changes in the way individuals access and use the mobile Internet;
- identify and integrate the acquisition of new businesses;
- expand into new markets;
- increase the awareness of our brand; and
- provide our users with a superior experience, including customer support and payment experiences.

However, we cannot guarantee that we will successfully implement any of these business strategies.

#### The U.S. government may modify, curtail or terminate one or more of our contracts.

We have dedicated a significant amount of resources to building out Wi-Fi networks for troops stationed on military bases pursuant to our contracts with the U.S. government. Military revenue comprises a substantial part of our overall revenue and the U.S. government may modify, curtail or terminate its contracts with us, either at its convenience or for default based on performance. Any such modification, curtailment, or termination of one or more of our government contracts could have a material adverse effect on our earnings, cash flow and/or financial position.

Negotiations with prospective or existing partners and telecom operators and network operators can be lengthy and unpredictable, which may cause our operating results to vary.

Our negotiations with prospective or existing venue partners, including large venues like airports, transportation hubs, stadiums, arenas, military bases, universities, convention centers, office campuses and other partners, to acquire Wi-Fi locations to operate or to acquire roaming rights on partners' networks, or for new partners to implement our solutions or to extend or amend current arrangements, can be lengthy, and in some cases can last over 12 months. Because of the lengthy negotiation cycle, the time required to reach a final or amended agreement with a partner is unpredictable and may lead to variances in our operating results from quarter to quarter. Negotiations with prospective and existing partners also require substantial time, effort and resources. We may ultimately fail in our negotiations, resulting in costs to our business without any associated benefits.

Additionally, our negotiations with telecom operators and network operators who pay us build-out fees and recurring access fees can likewise be lengthy and, therefore, the time required to reach a final or amended agreement with a telecom or network operators is unpredictable and may lead to variances in our operating results from quarter to quarter.

We operate relatively new businesses in a rapidly evolving industry, so an investment in our company involves more risk than an investment in a more mature company in an established industry.

We derive nearly all of our revenue from mobile Internet services, which are new and highly dynamic businesses, which face significant challenges. You should consider our business and prospects in light of the risks, uncertainties and difficulties we will encounter as an emerging company in a new

and rapidly evolving market. We may not be able to address these risks, uncertainties and difficulties successfully, which could materially harm our business and operating results.

Our industry is competitive and if we do not compete successfully, we could lose market share, experience reduced revenue or suffer losses.

The market for commercial wireless infrastructure solutions is competitive and impacted by technological change, and we expect competition with our current and potential competitors to intensify in the future. In particular, some of our competitors have taken steps or may decide to more aggressively compete against us, particularly in the market for venue build-outs of Wi-Fi, DAS, and small cell solutions.

Our competitors, many of whom are also our partners, include a variety of telecom operators and network operators, including Verizon, AT&T, T-Mobile, Sprint, Comcast, Charter, Altice and local operators. These and other competitors have developed or may develop technologies that compete directly with our solutions. Many of our competitors are substantially larger than we are and have substantially longer operating histories. We may not be able to fund or invest in certain areas of our business to the same degree as our competitors. Many have substantially greater product development and marketing budgets and other financial and personnel resources than we do. Some also have greater name and brand recognition and a larger base of subscribers or users than we have. In addition, our competitors may provide services that we generally do not, such as cellular, local exchange and long-distance services, voicemail and digital subscriber line. Users that desire these services may choose to also obtain mobile wireless connectivity services from a competitor that provides these additional services rather than from us.

Furthermore, we rely on several of our competitors as partners in roaming agreements. The roaming agreements provide that our retail customers and our wholesale partners' customers may use the Wi-Fi networks of our partners. One or more of our partners may deploy competing technologies that could reduce the partner's need to work with us under a roaming agreement. If our partners decide to terminate our roaming agreements, our global network of wireless networks may be reduced, which may result in a significant disruption to our business.

Competition could increase our selling and marketing expenses and related customer acquisition costs. We may not have the financial resources, technical expertise or marketing and support capabilities to continue to compete successfully. A failure to respond to established and new competitors may adversely impact our business and operating results.

We process, store, transfer and use personally identifiable information, confidential information and other data, which subjects us to laws and regulations and other legal obligations, of which the actual or perceived failure to comply could adversely affect our business.

We process, store, transfer and use data from or about our certain of our customers, including certain personally identifiable information and confidential information. These activities subject, or may subject, us to various federal, state, local and international laws and regulations regarding data privacy, protection, and security. In addition, we are also subject to the terms of our privacy policies and other third-party obligations regarding data privacy, protection and security. Although we strive to comply with applicable laws, regulations, policies and other legal obligations, the regulatory framework for data privacy, protection and security is complex and ambiguous, and thus our current rules and practices may not, or allegedly may not, be complaint. Such noncompliance or alleged noncompliance could increase our costs and require us to modify our services and products, possibly in a material manner, and could limit or prevent us from processing, storing, transferring or using certain customer data in our services and products.

In addition, data privacy, protection and security laws, regulations and industry standards are constantly evolving and being adopted in various jurisdictions. For example, the General Data Protection Regulation ("GDPR") became effective May 2018, superseding existing European Union data protection legislation. Additionally, the California Consumer Privacy Act ("CCPA") was passed in June 2018 and is set to be effective in 2020. The GDPR and CCPA both provide certain data subjects with new data privacy rights, compel new operational requirements for companies, and impose potentially significant penalties for noncompliance. The cost to comply with the GDPR, CCPA and other new laws, regulations and industry standards, including costs associated with any related governmental investigations, enforcement actions, or litigations or claims, may limit the use and adoption of our products and services and could have an adverse impact on our business.

Advances in computer capabilities, new discoveries in the field of cryptography or other cyber-security developments may result in a compromise or breach of the technology we use to protect user transaction data and cyber-security attacks are becoming more sophisticated. Cyber-security risks such as malicious software and attempts to gain unauthorized access to data are rapidly evolving and could lead to disruptions in our network, unauthorized release of personally identifiable, confidential or otherwise protected information or corruption of data. Any compromises of our security could damage our reputation and brand and expose us to possible liability such as litigation claims or fines, which would substantially harm our business and operating results. We have incurred costs and may need to expend significant additional resources to appropriately protect against security breaches, implement processes to adequately respond to security breaches (including as may be required by applicable law, such as the GDPR), or to address problems caused by breaches.

Many countries, such as European Union member countries as a result of the 2006 E.U. Data Retention Directive, are introducing, or have already introduced into local law some form of traffic and user data retention requirements, which are generally applicable to providers of electronic communications services. Retention periods and data types vary from country to country, and the various local data protection and other authorities may implement traffic and user retention requirements regarding certain data in different and potentially overlapping ways. Although the constitutionality of the 2006 E.U. Data Retention Directive has been questioned, we may be required to comply with data retention requirements in one or more jurisdictions, or we may be required to comply with these requirements in the future as a result of changes or modifications to the Boingo solution or changes or modifications to the technological infrastructure on which the Boingo solution is based. Failure to comply with these retention requirements may result in the imposition of costly penalties. Compliance with these retention requirements can be difficult and costly from a legal, operational and technical perspective and could harm our business and operational results.

Various events could disrupt our networks, information systems or properties and could impair our operating activities and negatively impact our reputation and financial results.

Network and information systems technologies are critical to our operating activities, both for our internal uses and supplying services to our customers. Network or information system shutdowns or other service failure disruptions, such as access point failure at one of our managed and operated wireless infrastructure networks or a backhaul disruption, caused by events such as computer hacking, dissemination of computer viruses, worms and other destructive or disruptive software, "cyber-attacks," process breakdowns, denial of service attacks and other malicious activity pose increasing risks. Both unsuccessful and successful "cyber-attacks" on companies have continued to increase in frequency, scope and potential harm in recent years. While we develop and maintain systems seeking to prevent systems-related events and security breaches from occurring, the development and maintenance of these systems is costly and requires ongoing monitoring and updating as techniques used in such attacks become more sophisticated and change frequently. We, and the third parties on which we rely, may be unable to anticipate these techniques or implement adequate preventive measures. While from time to

time attempts have been made to access our network, these attempts have not as yet resulted in any material release of information, degradation or disruption to our network and information systems. We maintain cyber liability insurance; however, this insurance may not be sufficient to cover the financial, legal, business or reputational losses that may result from an interruption or breach of our systems.

Our network and information systems are also vulnerable to damage or interruption from power outages, telecommunications failures, accidents, natural disasters (including extreme weather arising from short-term or any long-term changes in weather patterns), terrorist attacks and similar events. Further, the impacts associated with extreme weather or long-term changes in weather patterns, such as increased and intensified storm activity, may cause increased business interruptions. Our system redundancy may be ineffective or inadequate, and our disaster recovery planning may not be sufficient for all eventualities.

Any of these events, if directed at, or experienced by, us or technologies upon which we depend, could have adverse consequences on our network, our customers and our business, including damage to our or our customers' equipment and data and could result in lengthy interruptions in the availability of the Boingo solution. Large expenditures may be necessary to repair or replace damaged property, networks or information systems or to protect them from similar events in the future. Moreover, the amount and scope of insurance, if any, that we maintain against losses resulting from any such events or security breaches may not be sufficient to cover our losses or otherwise adequately compensate us for any disruptions to our business that may result. Any such significant service disruption could result in damage to our reputation and credibility, customer dissatisfaction and ultimately a loss of customers or revenue. Any significant loss of customers or revenue, or significant increase in costs of serving those customers, could adversely affect our growth, financial condition and results of operations.

We may be unsuccessful in expanding our international operations, which could harm the growth of our business, operating results and financial condition.

Our ability to expand internationally involves various risks, including the need to invest significant resources in unfamiliar markets, and the possibility that there may not be returns on these investments in the near future or at all. In addition, we have incurred and expect to continue to incur expenses before we generate any material revenue in these new markets. Our expansion plans will require significant management attention and resources. We have limited experience in selling our solutions in international markets or in conforming to local cultures, standards or policies. We may not be able to compete successfully in these international markets. Our ability to expand will also be limited by the demand for mobile Internet in international markets. Different privacy, censorship and liability standards and regulations and different intellectual property laws in foreign countries may cause our business and operating results to suffer.

Any future international operations may fail to succeed due to risks inherent in foreign operations, including:

- different technological solutions for mobile Internet than those used in North America;
- varied, unfamiliar and unclear legal and regulatory restrictions;
- unexpected changes in international regulatory requirements and tariffs;
- legal, political, social or systemic restrictions on the ability of U.S. companies to do business in foreign countries;
- currency fluctuations;
- Foreign Corrupt Practices Act compliance and related risks;
- difficulties in staffing and managing foreign operations;

- difficulties in enforcing contracts and collecting accounts receivable, and longer payment cycles, especially in emerging markets;
- reduced protection for intellectual property rights in some countries; and
- potential adverse tax consequences.

Some of our business partners also have international operations and are subject to the risks described above. Even if we are able to successfully manage the risks of international operations, our business may be adversely affected if our business partners are not able to successfully manage these risks.

As a result of these obstacles, we may find it difficult or prohibitively expensive to expand internationally or we may be unsuccessful in our attempt to do so, which could harm our business, operating results and financial condition.

Acquisitions could be difficult to identify, pose integration challenges, divert the attention of management, disrupt our business, dilute stockholder value, and adversely affect our operating results and financial condition.

We have in the past acquired and may in the future seek to acquire or invest in businesses, products or technologies that we believe could complement or expand our business or otherwise offer growth opportunities. For example, in August 2018, we acquired substantially all of the assets of Elauwit Networks, LLC, a provider of high-speed Wi-Fi and technology solutions to the student and multifamily housing market. Acquisitions may disrupt our business, divert our resources and require significant management attention that would otherwise be available for development of our existing business.

In addition, we may not be able to integrate the acquired personnel, operations and technologies successfully, or effectively manage the combined business following the acquisition. We also may not achieve the anticipated benefits from the acquired business due to a number of factors, including:

- inability to integrate or benefit from acquired technologies or services in a profitable manner;
- unanticipated costs, accounting charges or other liabilities associated with the acquisition;
- incurrence of acquisition-related costs;
- difficulty integrating operations, personnel and accounting and other systems of the acquired business;
- difficulties and additional expenses associated with supporting legacy products and hosting infrastructure of the acquired business, including due to language, geographical or cultural differences;
- difficulty converting the customers of the acquired business onto our contract terms, including disparities in the revenues, licensing, support or services model of the acquired company;
- adverse effects to our existing business relationships with business partners and customers as a result of the acquisition;
- the potential loss of key employees;
- use of resources that are needed in other parts of our business; and
- use of substantial portions of our available cash to consummate the acquisition.

In addition, a significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment at least

annually. In the future, if our acquisitions do not yield expected returns, we may be required to take charges to our operating results based on this impairment assessment process, which could adversely affect our results of operations. In addition, our exposure to risks associated with various claims, including the use of intellectual property, may be increased as a result of acquisitions of other companies. For example, we may have a lower level of visibility into the development process with respect to intellectual property or the care taken to safeguard against infringement risks with respect to the acquired company or technology. In addition, third parties may make infringement and similar or related claims after we have acquired technology that has not been asserted prior to our acquisition.

Acquisitions could also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our operating results. In addition, if an acquired business fails to meet our expectations, our operating results, business and financial position may suffer.

We rely on our credit facility to fund a significant portion of our capital expenditures and other capital needs. If we are unable to achieve compliance with the credit facility covenants, or interest rates increase significantly, or we are unable to renew our credit facility on favorable terms, or at all, our business would be negatively impacted.

In February 2019, we entered into a new Credit Agreement ("New Credit Agreement") and related agreements with Bank of America, N.A. acting as agent for lenders named therein. The New Credit Agreement replaced our November 2014 Credit Agreement with Bank of America N.A. acting as agent for lenders named therein, which expired in November 2018. The New Credit Agreement places restrictions on our ability to take certain actions and sets standards for minimum financial performance. If we fail to comply with the terms and conditions of this New Credit Agreement, then the line of credit may be withdrawn, and the additional funds will not be available to us to fund our capital needs.

The regulation of Internet communications, products and services is currently uncertain, which poses risks for our business from changes in laws, regulations, and interpretation or enforcement of existing laws or regulations.

The current regulatory environment for Internet communications, products and services is uncertain. Many laws and regulations were adopted prior to the advent of the Internet and related technologies and often do not contemplate or address the specific issues associated with the Internet and related technologies. The scope of laws and regulations applicable to the Internet remains uncertain and is subject to statutory or interpretive change. We cannot be certain that we, our partners or our users are currently in compliance with regulatory or other legal requirements in the numerous countries in which our service is used. Our failure or the failure of our partners, users and others with whom we transact business, or to whom we license the Boingo solution, to comply with existing or future regulatory or other legal requirements could materially adversely affect our business, financial condition and results of operations. Regulators may disagree with our interpretations of existing laws or regulations or the applicability of existing laws or regulations to our business, and existing laws, regulations and interpretations may change in unexpected ways.

We believe that the Boingo solution is on the forefront of wireless infrastructure connectivity, and therefore it may face greater regulatory scrutiny than other communications products and services. We cannot be certain what positions regulators may take regarding our compliance with, or lack of compliance with, current and future legal and regulatory requirements or what positions regulators may take regarding any past or future actions we have taken or may take in any jurisdiction. Regulators may determine that we are not in compliance with legal and regulatory requirements, and impose penalties, or we may need to make changes to the Boingo solution, which could be costly and difficult. Any of these events would adversely affect our operating results and business.

#### If we lose key personnel or are unable to attract and retain personnel on a cost-effective basis, our business could be harmed.

Our performance is substantially dependent on the continued services and performance of our senior management and our highly qualified team of engineers, many of whom have numerous years of experience and specialized expertise in our business. If we are not successful in hiring and retaining highly qualified engineers, we may not be able to extend or maintain our engineering and technological expertise and our future product and service development efforts could be adversely affected. Additionally, the process of attracting and retaining suitable replacements for any executive officers or any of our highly qualified engineers we lose in the future would result in transition costs and would divert the attention of other members of our senior management from our existing operations. Additionally, such a loss could be negatively perceived in the capital markets. If we lose members of our senior management, this may significantly delay or prevent the achievement of our strategic objectives and adversely affect our operating results.

Our future success also depends on our ability to identify, attract, hire, train, retain and motivate highly skilled managerial, operations, business development and marketing personnel. We have in the past maintained a rigorous, highly selective and time-consuming hiring process. We believe that our approach to hiring has significantly contributed to our success to date. However, our highly selective hiring process has made it more difficult for us to hire a sufficient number of qualified employees, and, as we grow, our hiring process may prevent us from hiring the personnel we need in a timely manner. Moreover, the cost of living in the Los Angeles area, where our corporate headquarters is located, has been an impediment to attracting new employees in the past, and we expect that this will continue to impair our ability to attract and retain employees in the future. If we fail to attract, integrate and retain the necessary personnel, we may not be able to grow effectively, and our business could suffer significantly.

Material defects or errors in our software could harm our reputation and brand, result in significant costs to us and impair our ability to sell the Boingo solution.

The software underlying the Boingo solution is inherently complex and may contain material defects or errors, particularly when the software is first introduced or when new versions or enhancements are released. We have from time to time found defects or errors in our software, and defects or errors in our existing software may be detected in the future. Any defects or errors that cause interruptions to the availability of our services could result in:

- a reduction in sales or delay in market acceptance of the Boingo solution;
- sales credits or refunds to our users and wholesale partners;
- loss of existing users and difficulty in attracting new users;
- diversion of development resources;
- harm to our reputation and brand image; and
- increased insurance costs.

The costs incurred in correcting any material defects or errors in our software may be substantial and could harm our operating results.

Our business depends on strong brands, and if we do not cost effectively develop, maintain and enhance our brand, our financial condition and operating results could be harmed.

We believe that the Boingo brand is a critical part of our business and that developing and maintaining awareness of our brand is important to achieving widespread acceptance of the Boingo

solution and is an important element in attracting and retaining customers and partners. We continue to seek new ways to promote our brand through our managed and operated hotspots. We intend to enhance our brand through low-cost co-marketing arrangements with our partners and through periodic promotional and sponsorship activities and by continuing to leverage the reach of social media to interact with our customers. In order to maintain strong relationships with our venue and network partners, we may have to reduce the visibility of the Boingo brand or make other decisions that do not promote and maintain the Boingo brand, such as our custom branding alternatives that we offer to wholesale clients. If we fail to promote and maintain the Boingo brand, or if we incur significant expenses to promote the brand and are still unsuccessful in maintaining a strong brand, our financial condition and operating results could be harmed.

Additionally, we believe that developing this brand in a cost-effective manner is important in meeting our expected margins. Brand promotion activities may not result in increased revenue, and any increased revenue resulting from these promotion activities may not offset the expenses we incurred in building our brand. If we fail to cost effectively build and maintain our brand, we may fail to attract or retain customers or partners, and our financial condition and results of operations could be harmed.

Worldwide economic conditions, and their impact on travel and consumer spending, may adversely affect our business, operating results and financial condition.

Our business is impacted by travel and consumer spending, because users seek to access the mobile Internet while they are on-the-go, and because spending on Internet access is often a consumer discretionary spending decision. Factors that tend to negatively impact levels of travel include high unemployment, high energy prices, low business and consumer confidence, the fear of terrorist attacks, war and other macroeconomic factors. Economic conditions that tend to negatively impact levels of discretionary consumer spending include high unemployment, high consumer debt, reductions in net worth, depressed real estate markets, increased taxation, high energy prices, high interest rates, low consumer confidence and other macroeconomic factors. If the global economic recovery is slower than expected, or if it weakens, our military and retail customer base, new military and retail customer acquisition and usage-based revenue could be materially harmed, and our results of operations would be adversely affected.

## The growth of free Wi-Fi networks may compete with our paid mobile Wi-Fi Internet solutions.

Many venues offer free mobile Wi-Fi as an incentive or value-added benefit to their customers. Free Wi-Fi may reduce retail customer demand for our services and put downward pressure on the prices we charge our retail customers. In addition, telecom operators may offer free mobile Wi-Fi as part of a home broadband or other service contract, which also may force down the prices we charge our retail customers. If we are unable to effectively offset this downward pressure on our prices by being a Wi-Fi service provider or sufficiently grow our DAS and small cell business, or if we are unable to acquire and retain retail customers, we will have lower profit margins and our operating results and financial condition may be adversely impacted.

We rely on third-party customer support service providers for the majority of our customer support calls. If these service providers experience operational difficulties or disruptions, our business could be adversely affected.

We depend on third-party customer support service providers to handle most of our routine multifamily, military and retail customer support cases. While we maintain limited customer support operations in our Los Angeles headquarters and our Columbia office, if our relationships with our customer support service providers terminate unexpectedly, or if our customer service providers experience operational difficulties, we may not be able to respond to customer support calls in a timely manner and the quality of our customer service would be adversely affected. This could harm our reputation and brand image and make it difficult for us to attract and retain users. In addition, the loss of our customer support service providers would require us to identify and contract with alternative sources, which could prove time-consuming and expensive.

If we are not successful in developing our mobile application for new devices and platforms, or if those solutions are not widely adopted, our results of operations and business could be adversely affected.

As new mobile devices and platforms are developed, we may encounter problems in developing products for such new mobile devices and platforms, and we may need to devote significant resources to the creation, support, and maintenance of such products. In addition, if we experience difficulties integrating our mobile applications into mobile devices, or if we face increased costs to distribute our mobile applications, our future growth and our results of operations could suffer.

If we fail to maintain relationships with providers of mobile operating systems or mobile application download stores, our business could be adversely affected.

We rely on the integration of our software into mobile operating systems to allow mobile devices to connect to our global network of wireless networks. If problems arise with our relationships with providers of mobile operating systems or mobile application download stores, such as the Apple App Store and Google Play, or if our mobile application receives unfavorable treatment compared to the promotion and placement of competing applications, such as the order of our products in the mobile application download stores, we may fail to attract or retain customers or partners, and our business could be adversely affected.

# **Risks Related to Our Intellectual Property**

Claims by others that we infringe their proprietary technology could harm our business.

In recent years there has been significant litigation involving intellectual property rights in many technology-based industries, including the wireless communications industry. While we have not been specifically targeted, companies similar to us have been subject to patent lawsuits. As we face increasing competition and gain an increasingly high profile, the possibility of intellectual property rights claims against us grows. We may be subject to third-party claims in the future. The costs of supporting these litigations and disputes are considerable, and there can be no assurance that a favorable outcome will be obtained. We may be required to settle these litigations and disputes on terms that are unfavorable to us, given the complex technical issues and inherent uncertainties in intellectual property litigation. Claims that the Boingo solution infringes third-party intellectual property rights, regardless of their merit or resolution, could also divert the efforts and attention of our management and technical personnel. The terms of any settlements or judgments may require us to:

- cease distribution and back-end operation of the Boingo solution;
- pay substantial damages for infringement;
- expend significant resources to develop non-infringing solutions;
- license technology from the third-party claiming infringement, which may not be available on commercially reasonable terms, or at all;
- cross-license our technology to a competitor to resolve an infringement claim, which could weaken our ability to compete with that competitor; or
- pay substantial damages to our partners to discontinue their use of or to replace infringing solutions sold to them with non-infringing solutions

Any of these unfavorable outcomes could have a material adverse effect on our business, financial condition and results of operations.

#### Our use of open source software could limit our ability to commercialize the Boingo solution.

We have incorporated open source software into the Boingo solution. Although we closely monitor our use of open source software, we are subject to the terms of open source licenses that have not been interpreted by U.S. or foreign courts, and there is a risk that in the future these licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to commercialize the Boingo solution. In that event, we could be required to seek licenses from third parties or to re-engineer our software in order to continue offering the Boingo solution, or to discontinue operations, any of which could materially adversely affect our business.

We utilize unlicensed spectrum in certain of our offerings, which is subject to intense competition, low barriers of entry and slowdowns due to multiple users.

We presently utilize unlicensed spectrum to provide our Wi-Fi Internet solutions. Unlicensed or "free" spectrum is available to multiple users and may suffer bandwidth limitations, interference and slowdowns if the number of users exceeds traffic capacity. The availability of unlicensed spectrum is not unlimited, and others do not need to obtain permits or licenses to utilize the same unlicensed spectrum that we currently, or may in the future, utilize. The inherent limitations of unlicensed spectrum could potentially threaten our ability to reliably deliver our services. Moreover, the prevalence of unlicensed spectrum creates low barriers to entry in our industry.

If we are unable to protect our intellectual property rights, our competitive position could be harmed, or we could be required to incur significant expenses to enforce our rights.

Our business depends on our ability to protect our proprietary technology. We rely on trade secret, patent, copyright and trademark laws and confidentiality agreements with employees and third parties, all of which offer only limited protection. We own eight patents and have applications for two additional patents pending in the United States. Despite our efforts, the steps we have taken to protect our proprietary rights may not be adequate to prevent the use or misappropriation of our proprietary information or infringement of our intellectual property rights. Our ability to police the use, misappropriation or infringement of our intellectual property is uncertain, particularly in countries other than the United States. Further, we do not know whether any of our pending patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims. Even if patents are issued, they may be contested, circumvented, or invalidated in the future. Moreover, the rights granted under any issued patents may not provide us with complete proprietary protection or any competitive advantages, and, as with any technology, competitors may be able to develop similar or superior technologies on their own now or in the future. Protecting against the unauthorized use of our solutions, trademarks, and other proprietary rights is expensive, difficult and, in some cases, impossible. Litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets, or to determine the validity and scope of the proprietary rights of others. Litigation could result in substantial costs and diversion of management resources, either of which could harm our business. Furthermore, many of our current and potential competitors have the ability to dedicate substantially greater resources to enforce their intellectual property rights than we do. Accordingly, despite our efforts, if the protection of our proprietary rights is inadequate to prevent use or misappropriation by third parties, the value of our brand and other intangible assets may be diminished and competitors may be able to more effectively mimic our service and methods of operations. Any of these events would have a material adverse effect on our business, financial condition and results of operations.

#### **Risks Related to Our Convertible Notes**

We have incurred substantial indebtedness that may decrease our business flexibility, access to capital, and/or increase our borrowing costs, and we may still incur substantially more debt, which may adversely affect our operations and financial results.

In October 2018, we issued \$201.25 million aggregate principal amount of 1.00% convertible senior notes due 2023 ("Convertible Notes"). Our indebtedness may:

- limit our ability to borrow additional funds for working capital, capital expenditures, acquisitions or other general business purposes;
- limit our ability to use our cash flow or obtain additional financing for future working capital, capital expenditures, acquisitions or other general business purposes;
- require us to use a substantial portion of our cash flow from operations to make debt service payments;
- limit our flexibility to plan for, or react to, changes in our business and industry;
- place us at a competitive disadvantage compared to our less leveraged competitors; and
- increase our vulnerability to the impact of adverse economic and industry conditions.

Further, the indenture governing the Convertible Notes does not restrict our ability to incur additional indebtedness and we and our subsidiaries may incur substantial additional indebtedness in the future, subject to the restrictions contained in any future debt instruments existing at the time, some of which may be secured indebtedness.

Servicing our debt will require a significant amount of cash. We may not have sufficient cash flow from our business to pay our substantial debt, and we may not have the ability to raise the funds necessary to settle conversions of the Convertible Notes in cash or to repurchase the Convertible Notes upon a fundamental change, which could adversely affect our business and results of operations.

Our ability to make scheduled payments of the principal of, to pay interest on, or to refinance our indebtedness, including the amounts payable under the Convertible Notes, depends on our future performance, which is subject to economic, financial, competitive, and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our indebtedness and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt, or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

Further, holders of the Convertible Notes have the right to require us to repurchase all or a portion of their Convertible Notes upon the occurrence of a "fundamental change" (as defined in the indenture governing the Convertible Notes (the "indenture")) before the maturity date at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, if any. In addition, upon conversion of the Convertible Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the Convertible Notes being converted. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Convertible Notes surrendered therefor or pay cash with respect to Convertible Notes being converted.

# The conditional conversion feature of the Convertible Notes, when triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the Convertible Notes is triggered, holders of the Convertible Notes will be entitled to convert their Convertible Notes at any time during specified periods at their option. If one or more holders elect to convert their Convertible Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation in cash, which could adversely affect our liquidity.

In addition, even if holders of Convertible Notes do not elect to convert their Convertible Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

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

Under Accounting Standards Codification 470-20, *Debt with Conversion and Other Options* ("ASC 470-20"), an entity must separately account for the liability and equity components of the convertible debt instruments (such as the Convertible Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The effect of ASC 470-20 on the accounting for the Convertible Notes is that the equity component is required to be included in the additional paid-in capital section of stockholders' equity on our consolidated balance sheet at the issuance date and the value of the equity component would be treated as debt discount for purposes of accounting for the debt component of the Convertible Notes. As a result, we will be required to record a greater amount of non-cash interest expense as a result of the amortization of the discounted carrying value of the Convertible Notes to their face amount over the term of the Convertible Notes. We will report larger net losses (or lower net income) in our financial results because ASC 470-20 will require interest to include both the amortization of the debt discount and the instrument's non-convertible coupon interest rate, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the Convertible Notes.

In addition, under certain circumstances, convertible debt instruments (such as the Convertible Notes) that may be settled entirely or partly in cash may be accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of such Convertible Notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of such Convertible Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If we are unable or otherwise elect not to use the treasury stock method in accounting for the shares issuable upon conversion of the Convertible Notes, then our diluted earnings per share could be adversely affected.

# The capped call transactions may affect the value of the Convertible Notes and our common stock.

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

In connection with establishing its initial hedges of the capped call transactions, the financial institution or its affiliate likely purchased shares of our common stock and/or entered into various derivative transactions with respect to our common stock concurrently with or shortly after the pricing of the Convertible Notes. The financial institution or its affiliate may modify its hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions following the pricing of the Convertible Notes and prior to the maturity of the Convertible Notes (and are likely to do so during any observation period related to a conversion of Convertible Notes). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the Convertible Notes.

The potential effect, if any, of these transactions and activities on the price of our common stock or the Convertible Notes will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock.

Conversion of the Convertible Notes will dilute the ownership interest of existing stockholders, including holders who had previously converted their Convertible Notes, or may otherwise depress the price of our common stock.

The conversion of some or all of the Convertible Notes will dilute the ownership interests of existing stockholders to the extent we deliver shares of our common stock upon conversion of any of the Convertible Notes. The Convertible Notes are currently convertible and may from time to time in the future be convertible at the option of their holders prior to their scheduled terms under certain circumstances. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Convertible Notes may encourage short selling by market participants because the conversion of the Convertible Notes could be used to satisfy short positions, or anticipated conversion of the Convertible Notes into shares of our common stock could depress the price of our common stock.

# Risks Related to Ownership of Our Common Stock

The market price of our common stock may be volatile, which could result in substantial losses for investors.

Fluctuations in market price and volume are particularly common among securities of technology companies. As a result, you may be unable to sell your shares of common stock at or above the price you paid. The market price of our common stock and trading price of our Convertible Notes may fluctuate significantly in response to the factors described in this risk factor section as well as the following factors, among others, many of which are beyond our control:

- general market conditions;
- domestic and international economic factors unrelated to our performance;
- actual or anticipated fluctuations in our quarterly operating results;
- changes in or failure to meet publicly disclosed expectations as to our future financial performance;
- changes in securities analysts' estimates of our financial performance or lack of research and reports by industry analysts;
- changes in market valuations or earnings of similar companies;
- announcements by us or our competitors of significant products, contracts, acquisitions, or strategic partnerships;

- developments or disputes concerning patents or proprietary rights, including increases or decreases in litigation expenses associated with intellectual property lawsuits we may initiate, or in which we may be named as defendants;
- termination or potential termination of a relationship with a venue partner;
- failure to complete significant sales;
- any future sales of our common stock or other securities; and
- additions or departures of key personnel.

If securities or industry analysts publish misleading or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock and our Convertible Notes depends in part on the research and reports that securities or industry analysts publish about us or our business. If one or more of these analysts downgrades our stock or publishes misleading or unfavorable research about our business, our stock price and the trading price of our Convertible Notes would likely decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price or the trading price of our Convertible Notes or trading volume to decline. Announcements by analysts that may have a significant impact on the market price of our common stock and the trading price of our Convertible Notes may relate to:

- our operating results or forecasts;
- new issuances of equity, debt or convertible debt by us;
- developments in our relationships with corporate customers;
- announcements by our customers or competitors;
- changes in regulatory policy or interpretation;
- governmental investigations;
- changes in the industries in which we operate;
- changes in the ratings of our stock by rating agencies or securities analysts;
- our acquisitions of complementary businesses; or
- our operational performance.

As a public company, we are subject to financial and other reporting and corporate governance requirements that may be difficult for us to satisfy and may divert resources and management attention from operating our business.

We are required to file annual, quarterly and other reports with the SEC. We must prepare and timely file financial statements that comply with SEC reporting requirements. We are also subject to other reporting and corporate governance requirements, under the listing standards of the NASDAQ Stock Market, or NASDAQ, which imposes significant compliance obligations upon us. We are required, among other things, to:

- prepare and file periodic reports, and distribute other stockholder communications, in compliance with the federal securities laws and NASDAQ rules; and
- evaluate and maintain our system of internal control over financial reporting, and report on management's assessment thereof, in compliance with rules and regulations of the SEC and the

Public Company Accounting Oversight Board. Further, we are required to obtain an opinion on the effectiveness of our internal control over financial reporting as of December 31<sup>st</sup> each year from our independent registered public accounting firm.

If we fail to comply with the rules of Section 404 of the Sarbanes-Oxley Act of 2002 related to accounting controls and procedures, or, if we discover material weaknesses and deficiencies in our internal control and accounting procedures, our financial results may be adversely effected and we may be subject to sanctions by regulatory authorities and our stock price and the trading price of our Convertible Notes could decline.

Section 404 of the Sarbanes-Oxley Act (the "Act") requires that we evaluate and determine the effectiveness of our internal control over financial reporting and requires an attestation and report by our external auditing firm on our internal control over financial reporting. We believe our system and process evaluation and testing comply with the management certification and auditor attestation requirements of Section 404. We cannot be certain, however, that we will be able to satisfy the requirements in Section 404 in all future periods, especially as we grow our business. If we are not able to continue to meet the requirements of Section 404 in a timely manner or with adequate compliance, we may be subject to sanctions or investigation by regulatory authorities, such as the SEC or the NASDAQ Stock Market. Any such action could adversely affect our financial results or investors' confidence in us and could cause our stock price and the trading price of our Convertible Notes to fall. Moreover, if we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our independent registered public accounting firm identifies deficiencies in our internal controls that are deemed to be material weaknesses, we may be required to incur significant additional financial and management resources to achieve compliance.

# If we need additional capital in the future, it may not be available on favorable terms, or at all.

We may require additional capital from equity or debt financing in the future to fund our operations or respond to competitive pressures or strategic opportunities. We may not be able to secure timely additional financing on favorable terms, or at all. The terms of additional financing may place limits on our financial and operating flexibility. If we raise additional funds through further issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, if and when we require it, our ability to grow or support our business and to respond to business challenges and opportunities could be significantly limited.

# Investors may experience dilution of their ownership interests because of the future issuance of additional shares of our capital stock.

We are authorized to issue 100,000,000 shares of common stock and 5,000,000 shares of preferred stock. As of December 31, 2018, there were approximately 42,669,000 shares of our common stock issued and outstanding and no shares of preferred stock outstanding. In addition, as of December 31, 2018, we had approximately 3,119,000 unvested restricted stock units, approximately 304,000 exercisable stock options, approximately 2,979,000 shares available for grant under the 2011 Plan, and approximately 4,756,000 shares subject to conversion under the Convertible Notes.

In the future, we may issue additional authorized but previously unissued equity securities resulting in the dilution of the ownership interests of our present stockholders. We may also issue additional shares of our capital stock or other securities that are convertible into or exercisable for our capital stock in connection with hiring or retaining employees or for other business purposes, including future sales of our securities for capital raising purposes. The future issuance of any such additional shares of

capital stock may create downward pressure on the trading price of our common stock and our Convertible Notes.

Anti-takeover provisions in our charter documents and Delaware law and provisions in the indenture for our Convertible Notes could discourage, delay, or prevent a change in control of our company and may affect the trading price of our common stock.

We are a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay, or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change of control would be beneficial to our existing stockholders. In addition, our amended and restated certificate of incorporation and amended and restated bylaws may discourage, delay, or prevent a change in our management or control over us that stockholders may consider favorable. Institutional shareholder representative groups, shareholder activists and others may disagree with our corporate governance provisions or other practices, such as those listed below. We generally will consider recommendations of institutional shareholder representative groups, but we will make decisions based on what our board and management believe to be in the best long-term interests of our company and stockholders. These groups could make recommendations to our stockholders against our practices or our board members if they disagree with our positions. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that:

- authorize the issuance of "blank check" preferred stock that could be issued by our board of directors to thwart a takeover attempt;
- establish a classified board of directors (that is being phased out over the next year), which prevents, until the 2020 annual meeting of stockholders when all directors will be elected annually, the ability of a stockholder to launch a proxy contest to replace the entire board of directors;
- require that until the expiration of the term of any director elected to serve a three-year term, such directors may only be removed from office for cause and only upon a majority stockholder vote;
- provide that vacancies on the board of directors, including newly-created directorships, may be filled only by a majority vote of directors then in office:
- limit who may call special meetings of stockholders;
- · prohibit stockholder action by written consent, thereby requiring all actions to be taken at a meeting of the stockholders; and
- require supermajority stockholder voting to effect certain amendments to our amended and restated certificate of incorporation and amended and restated bylaws.

In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a certain period of time.

In addition, if a fundamental change occurs prior to the maturity date of the Convertible Notes, holders of the Convertible Notes will have the right, at their option, to require us to repurchase all or a portion of their Convertible Notes. If a "make-whole fundamental change" (as defined in the indenture) occurs prior to the maturity date, we will in some cases be required to increase the conversion rate of the Convertible Notes for a holder that elects to convert its Convertible Notes in connection with such make-whole fundamental change. Furthermore, the indenture prohibits us from

engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the Convertible Notes.

These and other provisions in our charter documents, Convertible Notes, indenture and in Delaware law could deter or prevent a third party from acquiring us or could make it more difficult for stockholders or potential acquirors to obtain control of our board of directors or initiate actions that are opposed by our then-current board of directors, including to delay or impede a merger, tender offer, or proxy contest involving our company. The existence of these provisions could negatively affect the price of our common stock and the trading price of the Convertible Notes and limit opportunities for you to realize value in a corporate transaction.

Our business could be negatively affected as a result of a potential proxy contest for the election of directors at our annual meeting or other shareholder activism.

In 2016, we were subjected to a proxy contest, which resulted in the negotiation of changes to the board of directors and considerable costs were incurred. A future proxy contest would most likely require us to incur significant legal fees and proxy solicitation expenses and require significant time and attention by management and our board of directors. The potential of a proxy contest or other shareholder activism could interfere with our ability to execute our strategic plan, give rise to perceived uncertainties as to our future direction, result in the loss of potential business opportunities or make it more difficult to attract and retain qualified personnel, any of which could materially and adversely affect our business and operating results.

We have incurred substantial losses in past and current years and may incur additional losses in the future.

As of December 31, 2018, our accumulated deficit was \$129.9 million. We generated a net loss for the year ended December 31, 2018 and we are also currently investing in our future growth through expanding our network and buildouts, investing in our software, and consideration of future business acquisitions. As a result, we will incur higher depreciation and other operating expenses, as well as potential acquisition costs, that may negatively impact our ability to achieve profitability in future periods unless and until these growth efforts generate enough revenue to exceed their operating costs and cover our additional overhead needed to scale our business for this anticipated growth. The current global financial condition may also impact our ability to achieve profitability if we cannot generate sufficient revenue to offset the increased costs. In addition, costs associated with the acquisition and integration of any acquired companies may also negatively impact our ability to achieve profitability. For example, in August 2018 we closed the acquisition of substantially all of the assets of Elauwit Networks, LLC and our integration costs may negatively impact our ability to achieve profitability. Finally, given the competitive and evolving nature of the industry in which we operate, we may not be able to achieve or increase profitability.

We do not intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We do not intend to declare and pay dividends on our capital stock for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. Therefore, you are not likely to receive any dividends on your common stock for the foreseeable future and the success of an investment in shares of our common stock will depend upon any future appreciation in its value.

Changes in accounting standards and their interpretations could adversely affect our operating results.

U.S. GAAP are subject to interpretation by the Financial Accounting Standards Board, or FASB, the Public Company Accounting Oversight Board, or PCAOB, the SEC, and various other bodies that

promulgate and interpret appropriate accounting principles. These principles and related implementation guidelines and interpretations can be highly complex and involve subjective judgments. A change in these principles or interpretations, including the implementation of ASU 2016-02, *Leases (Topic 842)*, or accounting for the Convertible Notes could have a significant effect on our reported financial results, and could affect the reporting of transactions completed before or after the announcement of a change. Additionally, the adoption of these standards may potentially require enhancements or changes in our systems and will require significant time and cost on behalf of our financial management. A discussion of these standards and other pending changes in accounting principles generally accepted in the United States, are further discussed in Footnote 2 in the notes to our consolidated financial statements.

#### Item 1B. Unresolved Staff Comments

None.

#### Item 2. Properties

As of December 31, 2018, we leased approximately 53,000 square feet of space for our corporate headquarters in Los Angeles, California. As of December 31, 2018, we also leased an approximately 27,000 additional square feet in aggregate office space in San Francisco, California; Oak Brook, Illinois; Charleston, South Carolina; Columbia, South Carolina; Lake Success, New York; New York; McKinney, Texas; Detroit, Michigan; Sao Paolo, Brazil; and Dubai, United Arab Emirates. We believe that our office facilities will be adequate for the foreseeable future.

# Item 3. Legal Proceedings

From time to time, we may be involved in or subject to claims, suits, investigations and proceedings arising out of the normal course of business. We are not currently a party to any litigation that we believe could have a material adverse effect on our business, financial position, results of operations or cash flows.

# Item 4. Mine Safety Disclosures

Not applicable.

## PART II

# Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

#### **Market Information**

Our common stock is traded on the NASDAQ Global Market under the symbol "WIFI."

#### **Registered Stockholders**

As of February 22, 2019, there were 22 stockholders of record of our common stock. Stockholders of record do not include a substantially greater number of "street name" holders or beneficial holders of our common stock whose shares are held of record by banks, brokers and other financial institutions.

# Dividends

We have never declared or paid cash dividends on our common stock, and currently do not anticipate paying cash dividends in the foreseeable future. Any future determination to pay dividends on our common stock, if permissible, will be at the discretion of our board of directors and will depend

upon, among other factors, our financial condition, operating results, current and anticipated cash needs, plans for expansion and other factors that our board of directors may deem relevant.

# Recent Sales of Unregistered Securities; Use of Proceeds from Sale of Registered Securities

We did not sell any equity securities not registered under the Securities Act during the year ended December 31, 2018.

# **Issuer Purchases of Equity Securities**

On April 1, 2013, the Company approved a stock repurchase program to repurchase up to \$10,000,000 of the Company's common stock in the open market, exclusive of any commissions, markups or expenses. The stock repurchased will be retired and will resume the status of authorized but unissued shares of common stock. The Company did not repurchase any of our common stock during the years ended December 31, 2018 and 2017. As of December 31, 2018, the remaining approved amount for repurchases was approximately \$5,180,000.

# **Equity Compensation Plan Information**

On March 12, 2018, the Company filed a registration statement on Form S-8 to register 1,844,781 shares representing additional shares authorized as of January 1, 2018 under the Evergreen Provision of the 2011 Equity Incentive Plan. The Evergreen Provision of the 2011 Equity Incentive Plan terminated after January 1, 2018.

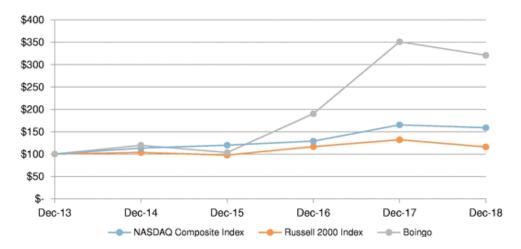
# **Performance Measurement Comparison**

The following performance graph shows the total stockholder return of an investment of \$100 in cash made on December 31, 2013 in each of (i) our common stock, (ii) a broad equity market index, the securities comprising the Nasdaq Composite Index, and (iii) issuers with similar market capitalizations, the securities comprising the Russell 2000 index.

The performance graph assumes that \$100 was invested on December 31, 2013 in our common stock and in each index, and that all dividends were reinvested. No dividends have been declared nor paid on our common stock. The comparisons in the graph below are required by the SEC and are not intended to forecast or be indicative of possible future performance of our common stock.

# COMPARISON OF 60 MONTHS CUMULATIVE TOTAL RETURN\*

Among Boingo Wireless, Inc., The NASDAQ Composite Index and The Russell 2000 Index\*\*



	_ 1	2/31/13	1	2/31/14	1	2/31/15	_1	2/31/16	_1	2/31/17	1	2/31/18
NASDAQ Composite Index	\$	100.00	\$	113.40	\$	119.89	\$	128.89	\$	165.29	\$	158.87
Russell 2000 Index	\$	100.00	\$	103.53	\$	97.62	\$	116.63	\$	131.96	\$	115.89
Boingo	\$	100.00	\$	119.66	\$	103.28	\$	190.17	\$	351.01	\$	320.90

- \* The material in this section is not "soliciting material" and is not deemed "filed" with the SEC. It is not to be incorporated by reference into any filing of Boingo Wireless, Inc. made under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing, except to the extent we specifically incorporate this section by reference.
- \*\* We chose the Russell 2000 index because it is comprised of issuers with similar market capitalizations. We do not believe that we can reasonably identify a peer group of issuers or an industry or line-of-business index.

# ITEM 6. SELECTED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 and our accompanying consolidated financial statements in Part II, Item 8 of this report.

The consolidated statements of operations data set forth below for years 2018, 2017 and 2016 and the consolidated balance sheets data as of the end of years 2018 and 2017 are derived from, and qualified by reference to, the audited consolidated financial statements included in Item 8 of this report. The consolidated statements of operations data for years 2015 and 2014 and the consolidated balance sheets data as of the end of years 2016, 2015 and 2014 are derived from the audited financial statements previously filed with the SEC on Form 10-K. The results of businesses acquired in a business combination are included in the Company's consolidated financial statements from the date of the acquisition.

On August 1, 2018, we acquired the assets of Elauwit Networks, LLC ("Elauwit") for \$29.5 million, which included cash paid at closing, holdback consideration, and the fair value of additional contingent consideration that would be due and payable subject to certain conditions and the successful achievement of annual revenue targets during the 2018, 2019, and 2020 fiscal years. Elauwit provides data and video services to multi-unit dwelling properties including student housing,

condominiums, apartments, senior living, and hospitality industries throughout the U.S. In addition, Elauwit builds and maintains the network that supports these services for property owners and managers and provides support for residents and employees. For further information on our Elauwit acquisition, refer to Footnote 3 in the notes to our consolidated financial statements.

Prior to August 4, 2015, we had a 70% ownership of Concourse Communications Detroit, LLC. On August 4, 2015, we purchased the remaining 30% ownership interest from the non-controlling interest owners for \$1.15 million. We accounted for this transaction as an acquisition of the remaining interest of an entity that had already been majority-owned by the Company. The purchase resulted in a reduction to additional paid-in capital of \$1.15 million, representing excess purchase price over the carrying amount of the non-controlling interests. Prior to this purchase, we had a controlling interest in this subsidiary, and therefore, this subsidiary had been and will continue to be consolidated with the Company's operations.

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09, Revenue from Contracts with Customers, which replaced the accounting standards for revenue recognition under FASB Accounting Standards Codification ("ASC") 605, Revenue Recognition, with a single comprehensive five-step model, eliminating industry-specific accounting rules. The core principle is to recognize revenue upon the transfer of control of goods or services to a customer at an amount that reflects the consideration expected to be received. The FASB amended several aspects of the guidance after the issuance of ASU 2014-09, and the new revenue recognition accounting standard, as amended, was codified within ASC 606, Revenue from Contracts with Customers. On January 1, 2018, we adopted ASC 606 using the modified retrospective method applied to those contracts which were not completed as of January 1, 2018. Results for reporting periods beginning on January 1, 2018 are presented under ASC 606, while prior period amounts are not adjusted and continue to be reported in accordance with ASC 605.

Adoption of ASC 606 using the modified retrospective method required us to record a cumulative effect adjustment, net of tax, to accumulated deficit and non-controlling interests of \$3,257,000 and \$69,000, respectively, on January 1, 2018. In addition, adoption of the standard resulted in the following changes to the consolidated balance sheet as of January 1, 2018:

	ary 1, 2018 r ASC 605)	 justment for Adoption thousands)	nuary 1, 2018 Per ASC 606)
Accounts receivable, net	\$ 26,148	\$ (1,069)	\$ 25,079
Prepaid expenses and other current			
assets	\$ 6,369	\$ 170	\$ 6,539
Other assets	\$ 10,082	\$ (2,179)	\$ 7,903
Deferred revenue, current	\$ 61,708	\$ 14,176	\$ 75,884
Deferred revenue, net of current			
portion	\$ 149,168	\$ (20,580)	\$ 128,588

The below table summarizes the changes to our consolidated balance sheet as of December 31, 2018 as a result of the adoption of ASC 606:

	mber 31, 2018 er ASC 605)	Adjustment for Adoption			December 31, 2018 (Per ASC 606)
		(i	n thousands)		
Accounts receivable, net	\$ 43,410	\$	(644)	\$	42,766
Prepaid expenses and other					
current assets	\$ 7,603	\$	212	\$	7,815
Other assets	\$ 12,224	\$	(2,288)	\$	9,936
Deferred revenue, current	\$ 82,731	\$	(2,348)	\$	80,383
Deferred revenue, net of current					
portion	\$ 147,785	\$	(10,580)	\$	137,205
Non-controlling interests	\$ 408	\$	1,803	\$	2,211

The below table summarizes the changes to our consolidated statement of operations for the year ended December 31, 2018 as a result of the adoption of ASC 606 with income taxes calculated excluding the tax effect on the equity component of the Convertible Notes:

	Decem	ar Ended ber 31, 2018 ASC 605)	Adjustment for Adoption (in thousands)			Year Ended eccember 31, 2018 (Per ASC 606)
Revenue	\$	244,307	\$	6,514	\$	250,821
Income tax benefit	\$	(4,785)	\$	(368)	\$	(5,153)
Non-controlling interests	\$	(245)	\$	1,734	\$	1,489

The changes to the consolidated balance sheets as of January 1, 2018 and December 31, 2018 and the consolidated statement of operations for the year ended December 31, 2018 were primarily due to the following factors: (i) reclassification of unbilled receivables (contract assets) to a contra-liability account under ASC 606; and (ii) recognition of revenue related to our single performance obligation for our DAS contracts monthly over the contract term once the customer has the ability to access the DAS network and we commence maintenance on the DAS network under ASC 606 as compared to recognition of build-out fees for our DAS contracts monthly over the term of the estimated customer relationship period once the build-out is complete and minimum monthly access fees for our DAS contracts monthly over the term of the telecom operator agreement under ASC 605. The changes to the consolidated balance sheet as of January 1, 2018 are reflected as non-cash changes within cash provided by operating activities in our consolidated statement of cash flows for the year ended December 31, 2018.

We early adopted FASB ASU 2016-09, Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, as of January 1, 2016. As a result of this adoption, we recorded \$6,933,000 and \$589,000 of net deferred tax assets related to our federal and state net operating losses for excess windfall tax benefits, respectively, as of January 1, 2016. We established a full valuation allowance against those deferred tax assets as of January 1, 2016 based on the determination that it was more likely than not that those deferred tax assets would not be realized. We also elected to change our accounting policy to account for forfeitures when they occur on a modified retrospective basis. The change in our accounting policy resulted in a \$94,000 increase to additional paid-in capital and accumulated deficit as of January 1, 2016.

We early adopted FASB ASU 2015-17, Balance Sheet Classification of Deferred Taxes, on a retrospective basis as of December 31, 2015. As a result, we reclassified \$787,000 from current deferred

tax assets to noncurrent deferred tax liabilities as of December 31, 2014 as the deferred tax assets and liabilities were related to the same tax-paying jurisdictions.

	Year Ended December 31,										
	_	2018	_	2017(2)	_	2016(2)	_	2015(2)	_	2014(2)	
C				(in thousand	s, ex	cept per sha	re an	nounts)			
Consolidated Statements of Operations Data:											
Revenue	\$	250,821	\$	204,369	\$	159,344	\$	139,626	\$	119,297	
Costs and operating expenses:											
Network access		113,572		90,702		69,112		62,988		59,411	
Network operations		52,215		47,615		42,307		33,537		25,475	
Development and technology		31,372		26,754		22,126		19,147		14,879	
Selling and marketing		22,647		20,933		18,729		19,653		16,382	
General and administrative		30,302		35,568		29,719		22,356		17,460	
Amortization of intangible assets		3,710		3,498		3,448		3,576		3,716	
Total costs and operating expenses		253,818		225,070		185,441		161,257		137,323	
Loss from operations		(2,997)		(20,701)		(26,097)		(21,631)		(18,026)	
Interest and other expense, net		(1,887)		(153)		(459)		(66)		(41)	
Loss before income taxes		(4,884)		(20,854)		(26,556)		(21,697)		(18,067)	
Income tax (benefit) expense		(5,153)		(2,078)		427		481		700	
Net income (loss)		269		(18,776)		(26,983)		(22,178)		(18,767)	
Net income attributable to non-											
controlling interests		1,489		590		348		114		754	
Net loss attributable to common											
stockholders	\$	(1,220)	\$	(19,366)	\$	(27,331)	\$	(22,292)	\$	(19,521)	
Net loss per share attributable to common stockholders:											
Basic	\$	(0.03)	\$	(0.49)	\$	(0.72)	\$	(0.60)	\$	(0.55)	
Diluted	\$	(0.03)	\$	(0.49)	\$	(0.72)	\$	(0.60)	\$	(0.55)	
Other Financial Data:											
Operating cash flows	\$	93,321	\$	97,728	\$	115,205	\$	98,575	\$	21,207	
Investing cash flows		(133,354)		(74,458)		(107,331)		(101,502)		(39,199)	
Financing cash flows		162,825		(16,054)		(3,121)		8,843		(480)	
Adjusted EBITDA(1)		91,818		68,916		40,798		29,636		20,300	
Investing cash flows Financing cash flows	φ	(133,354) 162,825	Ψ	(74,458) (16,054)	Ψ	(107,331) (3,121)	Ψ	(101,502) 8,843	Ψ	(39,199) (480)	

	As of December 31,									
	2018			2017		2016		2015		2014
					(in	thousands)				
Consolidated Balance Sheets Data:										
Cash and cash equivalents	\$	149,412	\$	26,685	\$	19,485	\$	14,718	\$	8,849
Marketable securities		_		_		_		_		1,614
Working capital		28,802		(63,146)		(31,388)		(31,802)		(14,489)
Total assets		602,900		384,309		380,981		341,012		218,615
Deferred revenue, net of current portion		137,205		149,168		152,719		106,825		27,267
Long-term debt		151,670		_		15,875		16,750		2,625
Long-term portion of capital leases and										
notes payable		4,911		6,747		4,612		2,336		581
Total liabilities		472,778		285,279		282,435		228,977		91,185
Total stockholders' equity		130,122		99,030		98,546		112,035		127,430

(1) We define Adjusted EBITDA as net loss attributable to common stockholders plus depreciation and amortization of property and equipment, stock-based compensation expense, amortization of intangible assets, income tax (benefit) expense, interest and other expense, net, non-controlling interests, and excludes charges or gains that are non-recurring, infrequent, or unusual.

We believe that Adjusted EBITDA is useful to investors and other users of our financial statements in evaluating our operating performance because it provides them with an additional tool to compare business performance across companies and across periods. We believe that:

- Adjusted EBITDA provides investors and other users of our financial information consistency and comparability with our
  past financial performance, facilitates period-to-period comparisons of operations and facilitates comparisons with other
  companies, many of which use similar non-generally accepted accounting principles in the United States ("GAAP")
  financial measures to supplement their GAAP results; and
- it is useful to exclude (i) non-cash charges, such as depreciation and amortization of property and equipment, amortization of intangible assets and stock-based compensation, from Adjusted EBITDA because the amount of such expenses in any specific period may not directly correlate to the underlying performance of our business operations, and these expenses can vary significantly between periods as a result of full amortization of previously acquired tangible and intangible assets or the timing of new stock-based awards and (ii) settlement expense related to a claim from one of our venue partners and charges related to our contested proxy election for the 2016 annual meeting of stockholders because they represent non-recurring charges and are not indicative of the underlying performance of our business operations.

We use Adjusted EBITDA in conjunction with traditional GAAP measures as part of our overall assessment of our performance, for planning purposes, including the preparation of our annual operating budget and quarterly forecasts, to evaluate the effectiveness of our business strategies and to communicate with our board of directors concerning our financial performance.

We do not place undue reliance on Adjusted EBITDA as our only measure of operating performance. Adjusted EBITDA should not be considered as a substitute for other measures of financial performance reported in accordance with GAAP. There are limitations to using non-GAAP financial measures, including that other companies may calculate these measures differently than we do.

We compensate for the inherent limitations associated with using Adjusted EBITDA through disclosure of these limitations, presentation of our financial statements in accordance with GAAP

and reconciliation of Adjusted EBITDA to the most directly comparable GAAP measure, net loss attributable to common stockholders.

The following provides a reconciliation of net loss attributable to common stockholders to Adjusted EBITDA:

			Year	En	ded Decemb	er 3	1,	
	2018		2017(2)	2016(2)		2015(2)		2014(2)
				(in	thousands)			
Net loss attributable to common								
stockholders	\$	(1,220)	\$ (19,366)	\$	(27,331)	\$	(22,292)	\$ (19,521)
Depreciation and amortization of property								
and equipment		78,837	69,097		49,202		38,293	27,446
Stock-based compensation expense		12,268	14,215		12,805		9,398	7,164
Amortization of intangible assets		3,710	3,498		3,448		3,576	3,716
Income tax (benefit) expense		(5,153)	(2,078)		427		481	700
Interest and other expense, net		1,887	153		459		66	41
Non-controlling interests		1,489	590		348		114	754
Contested proxy election expense		_	_		1,440		_	_
Settlement expense		_	2,807		_		_	_
Adjusted EBITDA	\$	91,818	\$ 68,916	\$	40,798	\$	29,636	\$ 20,300

<sup>(2)</sup> As noted above, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

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

The following discussion and analysis of our financial condition and results of operations should be read together with "Selected Consolidated Financial Data" and our audited consolidated financial statements and accompanying notes included elsewhere in this filing. This discussion contains forward-looking statements, based on current expectations and related to our plans, estimates, beliefs and anticipated future financial performance. These statements involve risks and uncertainties and our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those set forth under "Risk Factors," "Forward-Looking Statements" and elsewhere in this filing.

#### Overview

We believe we are the leading global provider of neutral-host commercial mobile Wi-Fi Internet solutions and indoor DAS services in the world. Our software applications and solutions enable individuals to access our extensive global Wi-Fi networks that cover over 1.2 million hotspots. We operate 58 DAS networks containing approximately 29,900 nodes. Our offerings provide compelling cost and performance advantages to our customers and partners.

We grew revenue from \$204.4 million in 2017 to \$250.8 million in 2018, an increase of 22.7%. We grew revenue from \$159.3 million in 2016 to \$204.4 million in 2017, an increase of 28.3%. We generated a net loss attributable to common stockholders of \$1.2 million in 2018 compared to \$19.4 million in 2017. Adjusted EBITDA increased from \$68.9 million in 2017 to \$91.8 million in 2018, an increase of 33.2%. For a discussion of Adjusted EBITDA and a reconciliation of net loss attributable to common stockholders to Adjusted EBITDA, see footnote 1 to "Selected Financial Data" in Part II, Item 6.

The proliferation of smartphones, tablets, laptops, wearables, and other Wi-Fi enabled devices—in conjunction with the increased consumption of high-bandwidth activities like video, online gaming, streaming, cloud-based applications and mobile apps—has created a demand for high-speed, high-bandwidth Internet access in public places both large and small. These data intensive activities are driving a global surge in mobile Internet data traffic that is expected to increase seven-fold between 2017 and 2022, according to Cisco's 2018 Visual Networking Index. We believe these trends present us with opportunities to generate significant growth in revenue and profitability.

# **Critical Accounting Policies and Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") and rules and regulations of the United States Securities and Exchange Commission ("SEC") requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, as well as the disclosure of contingent assets and liabilities, at the date of the financial statements. Such estimates and assumptions also affect the reported amounts of revenues and expenses during the reporting period. Although we believe these estimates are reasonable, actual results could differ from these estimates. On a regular basis, we evaluate our assumptions, judgments and estimates. We also discuss our critical accounting policies and estimates with the Audit Committee of the Board of Directors.

We believe that the assumptions and estimates associated with revenue recognition, goodwill, measuring recoverability of long-lived assets, stock-based compensation and income taxes have the greatest potential impact on our consolidated financial statements. Therefore, we believe the accounting policies discussed below are paramount to understanding our historical and future performance, as these policies relate to the more significant areas involving our management's judgments, assumptions and estimates.

# Revenue Recognition

We generate revenue from several sources including: (i) DAS customers that are telecom operators under long-term contracts for access to our DAS at our managed and operated locations, (ii) military and retail customers under subscription plans for month-to-month network access that automatically renew, and military and retail single-use access from sales of hourly, daily or other single-use access plans, (iii) arrangements with property owners for multifamily properties that provide for network installation and monthly Wi-Fi services and support to the residents and employees, (iv) arrangements with wholesale Wi-Fi customers that provide software licensing, network access, and/or professional services fees, and (v) display advertisements and sponsorships on our walled garden sign-in pages. Software licensed by our wholesale platform services customers can only be used during the term of the service arrangements and has no utility to them upon termination of the service arrangement.

# Post-ASC 606 Adoption

Revenues are recognized when a contract with a customer exists and control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services and the identified performance obligation has been satisfied. Contracts entered into at or near the same time with the same customer are combined and accounted for as a single contract if the contracts have a single commercial objective, the amount of consideration is dependent on the price or performance of the other contract, or the services promised in the contracts are a single performance obligation. Contract amendments are routine in the performance of our DAS, wholesale Wi-Fi, and advertising contracts. Contracts are often amended to account for changes in contract specifications or requirements to expand network access services. In most instances, our DAS and wholesale Wi-Fi contract amendments are for additional goods or services that are distinct, and the contract price increases by an amount that reflects the standalone selling price of the additional goods or services; therefore, such contract amendments are accounted for as separate contracts. Contract amendments for our advertising contracts are also generally for additional goods or services that are distinct; however, the contract price does not increase by an amount that reflects the standalone selling price of the additional goods or services. Advertising contract amendments are therefore generally accounted for as contract modifications under the prospective method. Contract amendments to transaction prices with no change in remaining services are accounted for as contract modifications under the cumulative catch-up method.

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account in ASC 606. A contract's transaction price is allocated to each distinct performance obligation and is recognized as revenue when, or as, the performance obligation is satisfied, which typically occurs when the services are rendered. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. Our contracts with customers may include multiple performance obligations. For such arrangements, we allocate revenue to each performance obligation based on its relative standalone selling price. We generally determine standalone selling prices based on the prices charged to customers. Judgment may be used to determine the standalone selling prices for items that are not sold separately, including services provided at no additional charge. Most of our performance obligations are satisfied over time as services are provided. We generally recognize revenue on a gross basis as we are primarily responsible for fulfilling the promises to provide the specified goods or services, we are responsible for paying all costs related to the goods or services before they have been transferred to the customer, and we have discretion in establishing prices for the specified goods or services. Revenue is presented net of any sales and value added taxes.

Payment terms vary on a contract-by-contract basis, although terms generally include a requirement of payment within 30 to 60 days for non-recurring payments, the first day of the monthly or quarterly billing cycle for recurring payments for DAS and wholesale Wi-Fi contracts, and the first day of the

month prior to the month that services are provided for multifamily contracts. We apply a practical expedient for purposes of determining whether a significant financing component may exist for our contracts if, at contract inception, we expect that the period between when we transfer the promised good or service to the customer and when the customer pays for that good or service will be one year or less. In instances where the customer pays for a good or service one year or more in advance of the period when we transfer the promised good or service to the customer, we have determined our contracts generally do not include a significant financing component. The primary purpose of our invoicing terms is not to receive financing from our customers or to provide customers with financing but rather to maximize our profitability on the customer contract. Specifically, inclusion of non-refundable upfront fees in our long-term customer contracts increases the likelihood that the customer will be committed through the end of the contractual term and ensures recoverability of the capital outlay that we incur in expectation of the customer fulfilling its contractual obligations. We may also provide service credits to our customers if we fail to meet contractual monthly system uptime requirements and we account for the variable consideration related to these service credits using the most likely amount method.

For contracts that include variable consideration, we estimate the amount of consideration at contract inception under the expected value method or the most likely amount method and include the amount of variable consideration that is not considered to be constrained. Significant judgment is used in constraining estimates of variable consideration. We update our estimates at the end of each reporting period as additional information becomes available.

Timing of revenue recognition may differ from the timing of invoicing to customers. We record unbilled receivables (contract assets) when revenue is recognized prior to invoicing, deferred revenue (contract liabilities) when revenue is recognized after invoicing, and receivables when we have an unconditional right to consideration to invoice and receive payment in the future. We present our DAS, multifamily, and wholesale Wi-Fi contracts in our consolidated balance sheet as either a contract asset or a contract liability with any unconditional rights to consideration presented separately as a receivable. Our other customer contracts generally do not have any significant contract asset or contract liability balances. Generally, a significant portion of the billing for our DAS contracts occurs prior to revenue recognition, resulting in our DAS contracts being presented as contract liabilities. In contrast, our wholesale Wi-Fi contracts that contain recurring fees with annual escalations are generally presented as contract assets as revenue is recognized prior to invoicing. Our multifamily contracts can be presented as either contract liabilities or contract assets primarily as a result of timing of invoicing for the network installations.

We recognize an asset for the incremental costs of obtaining a contract with a customer if we expect the benefit of those costs to be longer than one year. We have determined that certain sales incentive programs meet the requirements to be capitalized. Total capitalized costs to obtain a contract were immaterial during the year ended December 31, 2018 and are included in prepaid expenses and other current assets and non-current other assets on our consolidated balance sheets. We apply a practical expedient to expense costs as incurred for costs to obtain a contract with a customer when the amortization period would have been one year or less, the most significant of which relates to sales commissions related to obtaining our advertising customer contracts. Contract costs are evaluated for impairment in accordance with ASC 310, *Receivables*.

# **DAS**

We enter into long-term contracts with telecom operators at our managed and operated locations. The initial term of our contracts with telecom operators generally range from five to twenty years and the agreements generally contain renewal options. Some of our contracts provide termination for convenience clauses that may or may not include substantive termination penalties. We apply judgment in determining the contract term, the period during which we have present and enforceable rights and

obligations. Our DAS customer contracts generally contain a single performance obligation—provide non-exclusive access to our DAS or small cell networks to provide telecom operators' customers with access to the licensed wireless spectrum, together with providing telecom operators with construction, installation, optimization/engineering, maintenance services and agreed-upon storage space for the telecom operators' transmission equipment, each related to providing such licensed wireless spectrum to the telecom operators. The performance obligation is considered a series of distinct services as the performance obligation is satisfied over time and the same time-based input method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer. Our contract fee structure generally includes a non-refundable upfront fee and we evaluated whether customer options to renew services give rise to a material right that should be accounted for as a separate performance obligation because of those non-refundable upfront fees. We believe that a material right generally does not exist for our DAS customer contracts that contain renewal options because the telecom operators' decision to renew is highly dependent upon our ability to maintain our exclusivity as the DAS service provider at the venue location and our limited operating history with venue and customer renewals. The telecom operators will make the decision to incur the capital improvement costs at the venue location irrespective of our remaining exclusivity period with the venue as the telecom operators expect that the assets will continue to be serviced regardless of whether we will remain such exclusive DAS service provider. Our contracts also provide our DAS customers with the option to purchase additional future services such as upgrades or enhancements. This option is not considered to provide the customer with a material right that should be accounted for as a separate performance obligation since the cost of the additional future services depends entirely on the market rate of such services at the time such services are requested and we are not automatically obligated to stand ready to deliver these additional goods or services as the customer may reject our proposal. Periodically, we install and sell DAS networks to customers where we do not have service contracts or remaining obligations beyond the installation of those networks and we recognize build-out fees for such projects as revenue when the installation work is completed, and the network has been accepted by the customer.

Our contract fee structure may include varying components of an upfront build-out fee and recurring access, maintenance, and other fees. The upfront build-out fee is generally structured as a firm-fixed price or cost-plus arrangement and becomes payable as certain contract and/or construction milestones are achieved. Our DAS and small cell networks are neutral-host networks that can accommodate multiple telecom operators. Some of our DAS customer contracts provide for credits that may be issued to existing telecom operators for additional telecom operators subsequently joining the DAS network. The credits are generally based upon a fixed dollar amount per additional telecom operator, a fixed percentage amount of the original build-out fee paid by the telecom operator per additional telecom operator, or a proportionate share based upon the split among the relevant number of telecom operators for the actual costs incurred by all telecom operators to construct the DAS network. In most cases, there is significant uncertainty on whether additional telecom operator contracts will be executed at inception of the contract with the existing telecom operator. We believe that the upfront build-out fee is fixed consideration once the build-out is complete and any subsequent credits that may be issued would be accounted for in a manner similar to a contract modification under the prospective method because (i) the execution of customer contracts with additional telecom carriers is at our sole election and (ii) we would not execute agreements with additional telecom carriers if it would not increase our revenues and gross profits at the venue level. Further, the credits issued to the existing telecom operator changes the transaction price on a go-forward basis, which corresponds with the decline in service levels for the existing telecom operator once the neutral-host DAS network can be accessed by the additional telecom operator. The recurring access, maintenance, and other fees generally escalate on an annual basis. The recurring fees are variable consideration until the contract term and annual escalation dates are fixed. We estimate the variable consideration for our recurring fees using the most likely amount method based on the expected commencement date for the services.

We evaluate our estimates of variable consideration each period and record a cumulative catch-up adjustment in the period in which changes occur for the amount allocated to satisfied performance obligations.

We generally recognize revenue related to our single performance obligation for our DAS customer contract monthly over the contract term once the customer has the ability to access the DAS network and we commence maintenance on the DAS network.

# Military and Retail

Military and retail customers must review and agree to abide by our standard "Customer Agreement (With Acceptable Use Policy) and End User License Agreement" before they are able to sign-up for our subscription or single-use Wi-Fi network access services. Our military and retail customer contracts generally contain a single performance obligation—provide non-exclusive access to Wi-Fi services, together with performance of standard maintenance, customer support, and the Wi-Finder app to facilitate seamless connection to the Company's Wi-Fi network. The performance obligation is considered a series of distinct services as the performance obligation is satisfied over time and the same time-based input method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer. Our contracts also provide our military and retail subscription customers with the option to renew the agreement when the subscription term is over. We do not consider this option to provide the customer with a material right that should be accounted for as a separate performance obligation because the customer would not receive a discount if it decided to renew and the option to renew is cancellable within 5 days' notice prior to the end of the then current term by either party.

The contract transaction price is determined based on the subscription or single-use plan selected by the customer. Our military and retail service plans are for fixed price services as described on our website. From time to time, we offer promotional discounts that result in an immediate reduction in the price paid by the customer. Subscription fees from military and retail customers are paid monthly in advance. We provide refunds for our military and retail services on a case-by-case basis. Refunds and credit card chargeback amounts are not significant and are recorded as contra-revenue in the period the refunds are made, or chargebacks are received.

Subscription fee revenue is recognized ratably over the subscription period. Revenue generated from military and retail single-use access is recognized when access is provided, and the performance obligation is satisfied.

# Multifamily

We enter into long-term contracts with property owners. The initial term of our contracts with property owners generally range from three to five years and the contracts may contain renewal options. Some of our contracts provide termination for convenience clauses that may or may not include substantive termination penalties. We apply judgment in determining the contract term, which is the period during which we have present and enforceable rights and obligations. Our customer contracts generally contain two performance obligations: (i) install the network required to provide Wi-Fi services; and (ii) provide Wi-Fi services and technical support to the residents and employees. Our contracts may also provide our property owners with the option to renew the agreement. We do not consider this option to provide the property owner with a material right that should be accounted for as a separate performance obligation because the property owner would not receive a discount if it decided to renew and the option to renew is generally cancellable by either party subject to the notice of non-renewal requirements specified in the contract. Our contracts may also provide our customers with the option to purchase additional future services. We do not consider this option to provide the customer with a material right that should be accounted for as a separate performance obligation since

the cost of the additional future services are generally at market rates for such services and we are not automatically obligated to stand ready to deliver these additional goods or services because the customer may reject our proposal.

Our contract fee structure includes a network installation fee and recurring Wi-Fi service and support fees. The network installation fee is generally structured as a firm-fixed price arrangement and becomes payable as certain contract and/or installation milestones are achieved. We generally estimate variable consideration for unpriced change orders using the most likely amount method based on the expected price for those services. If network installations are not completed by specified dates, we may be subject to network installation penalties. We estimate the variable consideration for our network installation fees using the most likely amount method based on the amount of network installation penalties we expect to incur. Title to the network generally transfers to the property owner once installation is completed and the network has been accepted. We generally recognize revenue related to our network installation period. We may provide latent defect warranties for materials and installation labor services related to our network installation services. Our warranty obligations are generally not accounted for as separate performance obligations as warranties cannot be separately purchased and warranties do not provide a service in addition to the assurance that the network will function as expected.

The recurring fees commence once the network is launched with recurring fees generally based upon a fixed or variable occupancy rate. The recurring Wi-Fi service fees may be adjusted prospectively for changes in circuit and/or video content costs, and Wi-Fi support fees may escalate on an annual basis. We estimate the variable consideration for our recurring fees using the expected value method with the exception of the variable consideration related to actual occupancy rates, which we record when we have the contractual right to bill. We evaluate our estimates of variable consideration each period and record a cumulative catch-up adjustment in the period in which changes occur for the amount allocated to satisfied performance obligations. We recognize revenue related to the recurring fees on a monthly basis over the contract term as the Wi-Fi services and support is rendered, and the performance obligation is satisfied.

#### Wholesale Wi-Fi

We enter into long-term contracts with enterprise customers such as telecom operators, cable companies, technology companies, and enterprise software/services companies, that pay us usage-based Wi-Fi network access and software licensing fees to allow their customers' access to our footprint worldwide. We also enter into long-term contracts with financial institutions and other enterprise customers who provide access to our Wi-Fi footprint as a value-added service for their customers. The initial term of our contracts with wholesale Wi-Fi customers generally range from one to three years and the agreements generally contain renewal options. Some of our contracts provide termination for convenience clauses that may or may not include substantive termination penalties. We apply judgment in determining the contract term, the period during which we have present and enforceable rights and obligations. Our wholesale Wi-Fi customer contracts generally contain a single performance obligation—provide non-exclusive rights to access our Wi-Fi networks to provide wholesale Wi-Fi customers' end customers with access to the high-speed broadband network that may be bundled together with integration services, support services, and/or performance of standard maintenance. The performance obligation is considered a series of distinct services as the performance obligation is satisfied over time and the same time-based input method or usage-based output method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer. Our contracts may also provide our enterprise customers with the option to renew the agreement. This option is not considered to provide the customer with a material right that should be accounted for as a separate performance obligation because the customer would not receive a discount if it decided to renew and the option to renew is

generally cancellable by either party subject to the notice of non-renewal requirements specified in the contract. Our contracts may also provide our wholesale Wi-Fi customers with the option to purchase additional future services. We do not consider this option to provide the customer with a material right that should be accounted for as a separate performance obligation since the cost of the additional future services are generally at market rates for such services and we are not automatically obligated to stand ready to deliver these additional goods or services because the customer may reject our proposal. Periodically, we install and sell Wi-Fi networks to customers where we do not have service contracts or remaining obligations beyond the installation of those networks and we recognize build-out fees for such projects as revenue when the installation work is completed, and the network has been accepted by the customer.

Our contract fee structure may include varying components of a minimum fee and usage-based fees. Minimum fees represent fixed price consideration while usage-based fees represent variable consideration. With respect to variable consideration, our commitment to our wholesale Wi-Fi customers consists of providing continuous access to the network. It is therefore a single performance obligation to stand ready to perform and we allocate the variable fees charged for usage when we have the contractual right to bill. The variable component of revenue is recognized based on the actual usage during the period.

Wholesale Wi-Fi revenue is recognized as it is earned over the relevant contract term with variable consideration recognized when we have the contractual right to bill.

# Advertising

We generally enter into short-term cancellable insertion orders with our advertising customers for advertising campaigns that are served at our managed and operated locations and other locations where we solely provide authorized access to a partner's Wi-Fi network through sponsored and promotional programs. Our sponsorship advertising arrangements are generally priced under a cost per engagement structure, which is a set price per click or engagement, or a cost per install structure for third party application downloads. Our display advertising arrangements are priced based on cost per thousand impressions. Insertion orders may also include bonus items. Our advertising customer contracts may contain multiple performance obligations with each distinct service. These distinct services may include an advertisement video or banner impressions in the contract bundled with the requirement to provide network, space on the website, and integration of customer advertisement onto the website, and each is generally considered to be its own performance obligation. The performance obligations are considered a series of distinct services as the performance obligations are satisfied over time and the same action-based output method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer.

The contract transaction price is comprised of variable consideration based on the stated rates applied against the number of units delivered inclusive of the bonus units subject to the maximums provided for in the insertion order. It is customary for us to provide additional units over and above the amounts contractually required; however, there are a number of factors that can also negatively impact our ability to deliver the units required by the customer such as service outages at the venue resulting from power or circuit failures and customer cancellation of the remaining undelivered units under the insertion order due to campaign performance or budgetary constraints. Typically, the advertising campaign periods are short in duration. We therefore use the contractual rates per the insertion orders and actual units delivered to determine the transaction price each period end. The transaction price is allocated to each performance obligation based on the standalone selling price of each performance obligation.

Advertising revenue is recognized ratably over the service period based on actual units delivered subject to the maximums provided for in the insertion order.

# Pre-ASC 606 Adoption

We recognize revenue when an arrangement exists, services have been rendered, fees are fixed or determinable, no significant obligations remain related to the earned fees and collection of the related receivable is reasonably assured. Revenue is presented net of any sales and value added taxes.

Revenue generated from access to our DAS networks consists of build-out fees and recurring access fees under certain long-term contracts with telecom operators. Build-out fees paid upfront are generally deferred and recognized ratably over the term of the estimated customer relationship period, once the build-out is complete. Periodically, we install and sell Wi-Fi and DAS networks to customers where we do not have service contracts or remaining obligations beyond the installation of those networks and we recognize build-out fees for such projects as revenue when the installation work is completed, and the network has been accepted by the customer. Minimum monthly access fees for usage of the DAS networks are non-cancellable and generally escalate on an annual basis. These minimum monthly access fees are recognized ratably over the term of the telecom operator agreement. The initial term of our contracts with telecom operators generally range from five to twenty years and the agreements generally contain renewal clauses. Revenue from DAS network access fees in excess of the monthly minimums is recognized when earned.

Subscription fees from military and retail customers are paid monthly in advance and revenue is deferred for the portions of monthly recurring subscription fees collected in advance. We provide refunds for our military and retail services on a case-by-case basis. These amounts are not significant and are recorded as contra-revenue in the period the refunds are made. Subscription fee revenue is recognized ratably over the subscription period. Revenue generated from military and retail single-use access is recognized when access is provided.

Services provided to wholesale Wi-Fi partners generally contain several elements including: (i) a term license to use our software to access our Wi-Fi network, (ii) access fees for Wi-Fi network usage, and/or (iii) professional services for software integration and customization and to maintain the Wi-Fi service. The term license, monthly minimum network access fees and professional services are billed monthly based upon predetermined fixed rates. Once the term license for integration and customization are delivered, the fees from the arrangement are recognized ratably over the remaining term of the service arrangement. The initial term of the license agreements is generally between one to three years and the agreements generally contain renewal clauses. Revenue for Wi-Fi network access fees in excess of the monthly minimum amounts is recognized when earned. All elements within existing service arrangements are generally delivered and earned concurrently throughout the term of the respective service arrangement.

In instances where the minimum monthly Wi-Fi and DAS network access fees escalate over the term of the wholesale service arrangement, an unbilled receivable is recognized when performance is within our control and when we have reasonable assurance that the unbilled receivable balance will be collected.

We adopted the provisions of ASU 2009-13, Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements, on a prospective basis on January 1, 2011. For multiple-deliverable arrangements entered into prior to January 1, 2011 that are accounted for under ASC 605-25, Revenue Recognition—Multiple-Deliverable Revenue Arrangements, we defer recognition of revenue for the full arrangement and recognize all revenue ratably over the term of the estimated customer relationship period for DAS arrangements and the wholesale service period for Wi-Fi platform service arrangements, as we do not have evidence of fair value for the undelivered elements in the arrangement. For multiple-deliverable arrangements entered into or materially modified after January 1, 2011 that are accounted for under ASC 605-25, we evaluate whether separate units of accounting exist and then allocate the arrangement consideration to all units of accounting based on the relative selling price method using estimated selling prices if vendor specific objective evidence and third-party evidence is not available. We

recognize the revenue associated with the separate units of accounting upon completion of such services or ratably over the term of the estimated customer relationship period for DAS arrangements and the wholesale service period for Wi-Fi platform service arrangements.

Advertising revenue is generated from advertisements on our managed and operated or partner networks. In determining whether an arrangement exists, we ensure that a binding arrangement is in place, such as a standard insertion order or a fully executed customer-specific agreement. Obligations pursuant to our advertising revenue arrangements typically include a minimum number of units or the satisfaction of certain performance criteria. Advertising and other revenue is recognized when the services are performed.

# Goodwill

Goodwill represents the excess of purchase price over fair value of net assets acquired. Goodwill is not amortized but instead is tested annually for impairment, or more frequently when events or changes in circumstances indicate that fair value of the reporting unit has been reduced to less than its carrying value. We perform our impairment test annually as of December 31<sup>st</sup>. Entities have the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the goodwill impairment test described in ASC 350, *Intangibles—Goodwill and Other*. If, after assessing qualitative factors, an entity determines it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then performing the impairment test is unnecessary. The impairment loss, if any, is measured by comparing the implied fair value of the reporting unit goodwill with the carrying amount of goodwill.

At December 31, 2018 and 2017, we tested our goodwill for impairment using a market-based approach and no impairment was identified as the fair value of our sole reporting unit was substantially in excess of its carrying amount. To date, we have not recorded any goodwill impairment charges.

# Measuring Recoverability of Long-Lived Assets

Our long-lived assets are depreciated and amortized over the estimated useful lives of the related asset type using the straight-line method. The estimated useful lives for property and equipment are as follows:

Software	2 to 5 years
Computer equipment	3 to 5 years
Furniture, fixtures and office	3 to 5 years
equipment	
Leasehold improvements	The shorter of the estimated useful
	life or the remaining term of the
	agreements, generally ranging from
	2 to 18 years

We perform an impairment review of long-lived assets held and used whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors we consider important that could trigger an impairment review include, but are not limited to, significant underperformance relative to projected future operating results, significant changes in the manner of our use of the acquired assets or our overall business and/or product strategies and significant industry or economic trends. When we determine that the carrying value of a long-lived asset may not be recoverable based upon the existence of one or more of these indicators, we determine the recoverability by comparing the carrying amount of the asset to net future undiscounted cash flows that the asset is expected to generate or other indices of fair value. We would then recognize an impairment charge equal to the amount by which the carrying amount exceeds the fair market value of the asset.

# Stock-based Compensation

Stock-based compensation consists of stock options and restricted stock units ("RSUs"), which are granted to employees and non-employees. We recognize compensation expense equal to the grant date fair value on a straight-line basis, net of forfeitures, over the employee requisite service period. We recognize stock-based compensation expense for performance-based RSUs when we believe that it is probable that the performance objectives will be met. The grant date fair value of our stock option awards is determined using the Black-Scholes option pricing model.

# Income Taxes

Income taxes are provided based on the liability method, which results in income tax assets and liabilities arising from temporary differences. Temporary differences are differences between the tax basis of assets and liabilities and their reported amounts in the financial statements that will result in taxable or deductible amounts in future years. The liability method requires the effect of tax rate changes on current and accumulated deferred income taxes to be reflected in the period in which the rate change was enacted. The liability method also requires that deferred tax assets be reduced by a valuation allowance unless it is more likely than not that the assets will be realized.

We may recognize the tax benefit from uncertain tax positions only if it is at least more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than 50% likelihood of being realized upon settlement with the taxing authorities.

We establish valuation allowances when necessary to reduce deferred tax assets to the amounts expected to be realized. We evaluate the need for, and the adequacy of, valuation allowances based on the expected realization of our deferred tax assets. The factors used to assess the likelihood of realization include historical earnings, our latest forecast of taxable income and available tax planning strategies that could be implemented to realize the net deferred tax assets.

Our effective tax rates are primarily affected by changes in our valuation allowances, the amount of our taxable income or losses in the various taxing jurisdictions in which we operate, the amount of federal and state net operating losses and tax credits, the extent to which we can utilize these net operating loss carryforwards and tax credits and certain benefits related to stock option activity.

# **Recent Accounting Pronouncements**

Information regarding recent accounting pronouncements is contained in Note 2 "Significant Accounting Policies" to the accompanying consolidated financial statements included in Part II, Item 8, which is incorporated herein by this reference.

# **Key Business Metrics**

In addition to monitoring traditional financial measures, we also monitor our operating performance using key performance indicators. Our key performance indicators follow:

	Year Ended December 31,						
	2018	2016					
	(i	in thousands)					
DAS nodes	29.9	23.5	19.2				
Subscribers—military	138	130	107				
Subscribers—retail	122	188	195				
Connects	277,744	223,960	142,802				

Voor Ended December 21

DAS nodes. This metric represents the number of active DAS nodes as of the end of the period. A DAS node is a single communications endpoint, typically an antenna, which transmits or receives radio frequency signals wirelessly. This measure is an indicator of the reach of our DAS network. We are experiencing strong customer demand from telecom operators to gain access to our DAS networks; accordingly, we expect to continue to invest in securing, building out and upgrading our DAS networks to meet this demand.

Subscribers—military and Subscribers—retail. These metrics represent the number of paying customers who are on a month-to-month subscription plan at a given period end. Military subscribers have increased as we deploy our service on new military bases. We also expect to see modest increases in military subscribers as we increase signups for new customers on existing military bases through targeted marketing and by continuing to build the Boingo brand in the military vertical. Retail subscribers have continued to decline as we have expanded our product offerings and enhanced our focus on our wholesale and advertising service offerings.

Connects. This metric shows how often individuals connect to our global Wi-Fi network in a given period. The connects include wholesale and retail customers in both customer pay locations and customer free locations where we are a paid service provider or receive sponsorship or promotion fees. We count each connect as a single connect regardless of how many times that individual accesses the network at a given venue during their 24-hour period. This measure is an indicator of paid activity throughout our network.

# **Key Components of our Results of Operations**

#### Revenue

Our revenue consists of DAS revenue, military/multifamily revenue, retail revenue, wholesale Wi-Fi revenue, and advertising and other revenue.

DAS. We generate revenue from telecom operator partners that pay us network build-out fees, inclusive of network upgrades, and access fees for our DAS and small cell networks.

Military/multifamily and retail. We generate revenue from sales to military and retail individuals of month-to-month network access subscriptions that automatically renew and hourly, daily or other single-use access, primarily through charge card transactions. We also generate multifamily revenue from property owners who pay us a recurring monthly fee for Wi-Fi services including building and maintaining the network that supports these services and providing support for residents and employees of the properties.

Wholesale—Wi-Fi. We generate revenue from wholesale Wi-Fi partners that license our software and pay usage-based monthly network access fees to allow their customers to access our global Wi-Fi network. Usage-based network access fees may be measured in minutes, connects, megabytes or gigabytes, and in most cases are subject to minimum volume commitments. Other wholesale Wi-Fi partners pay us monthly fees to provide a Wi-Fi infrastructure that we install, manage and operate at their venues for their customers under a service provider arrangement.

Advertising and other. We generate revenue from advertisers that seek to reach visitors to our landing pages at our managed and operated network locations with online advertising, promotional and sponsored programs and at locations where we solely provide authorized access to a partner's Wi-Fi network through sponsored access and promotional programs. In addition, we receive revenue from partners in certain venues where we manage and operate the Wi-Fi network.

For the years ended December 31, 2018, 2017 and 2016, entities affiliated with Sprint Corporation accounted for 14%, 11% and 11%, respectively, of total revenue. For the years ended December 31,

2018 and 2017, entities affiliated with T-Mobile USA, Inc. accounted for 12% and 11%, respectively, of total revenue. For the years ended December 31, 2018 and 2017, entities affiliated with Verizon Communications Inc. accounted for 11% and 11%, respectively, of total revenue. For the years ended December 31, 2017 and 2016, entities affiliated with AT&T Inc. accounted for 11% and 12%, respectively, of total revenue. The loss of these groups and the customers could have a material adverse impact on our consolidated statements of operations.

# **Costs and Operating Expenses**

We classify our costs and operating expenses as network access, network operations, development and technology, selling and marketing, general and administrative, and amortization of intangible assets. Network access costs consist primarily of payments to venues and network partners in our network. Other costs and operating expenses primarily consist of personnel costs, costs for contracted labor and development, marketing, legal, accounting and consulting services, and other professional service fees. Personnel costs include salaries, bonuses, stock-based compensation and employee benefits. Facilities costs are generally allocated based on headcount. Depreciation and amortization expenses associated with specifically identifiable property and equipment are allocated to the appropriate expense categories.

*Network access.* Network access costs consist of revenue share payments to venue owners where our managed and operated hotspots are located, usage-based fees to our roaming network partners for access to their networks, depreciation of equipment related to network build-out projects in our managed and operated locations, sale of equipment, and bandwidth and other Internet connectivity expenses in our managed and operated locations.

*Network operations.* Network operations expenses consist of costs for our customer service department and for our operations staff who design, build, monitor and maintain our networks. Also included are expenses for our customer service provider that handles customer care inquiries and expenses for network operations contractors, equipment depreciation, and software and hardware maintenance fees.

Development and technology. Development and technology expenses consist of costs for our product development and engineering departments, developers and our information systems services staff, depreciation of our equipment and internal-use software, cloud computing, and hardware and software maintenance fees.

*Selling and marketing.* Selling and marketing expenses consist of costs for our business development and marketing employees and executives, travel and entertainment, and marketing programs.

General and administrative. General and administrative expenses consist of costs for our executive, finance and accounting, legal and human resources personnel, as well as legal, accounting, tax and other professional service fees. Also included are other corporate expenses such as charge card processing fees and bad debt expense.

Amortization of intangible assets. Amortization of intangible assets consists primarily of acquired backlog, customer and partnership relationships, technology, patents, trademarks, and non-compete agreements.

# **Interest and Other Expense, Net**

Interest and other expense, net, primarily consists of interest expense, net of amounts capitalized, offset by interest income.

# Income Tax (Benefit) Expense

We established a full valuation allowance as a result of our assessment that it was more likely than not that certain federal and state deferred tax assets would not be realized, and we have continued to maintain the full valuation allowance as of December 31, 2018 and 2017.

# **Non-controlling Interests**

Non-controlling interests are comprised of minority holdings by third parties in our subsidiaries Chicago Concourse Development Group, LLC ("CCDG") and Boingo Holding Participacoes Ltda. ("BHPL").

We are generally required to pay a portion of allocated net profits less capital expenditures of the preceding year to the non-controlling interest holders of CCDG. The limited liability company agreement for CCDG does not have a term. CCDG can be dissolved upon the unanimous agreement of the members, upon the sale of CCDG, upon declaration of bankruptcy, or upon the termination of the license agreement between CCDG and the City of Chicago.

We attributed profits and losses to the non-controlling interest in BHPL under the terms of the limited liability company agreement in proportion to their holdings. The limited liability company agreement with BHPL does not have a term. We, by resolution of the members, may distribute profits against retained earnings or profit reserves existing on the most recent annual balance sheet or may draw up financial statements and distribute profits in shorter periods. BHPL can be dissolved by resolution of the members and as otherwise provided for by law.

# **Results of Operations**

The following tables set forth our results of operations for the specified periods.

	Year Ended December 31,					
	_	2018		2017(1)		2016(1)
			(in	thousands)		
Consolidated Statements of Operations Data:						
Revenue	\$	250,821	\$	204,369	\$	159,344
Costs and operating expenses:						
Network access		113,572		90,702		69,112
Network operations		52,215		47,615		42,307
Development and technology		31,372		26,754		22,126
Selling and marketing		22,647		20,933		18,729
General and administrative		30,302		35,568		29,719
Amortization of intangible assets		3,710		3,498		3,448
Total costs and operating expenses		253,818		225,070		185,441
Loss from operations		(2,997)		(20,701)		(26,097)
Interest and other expense, net		(1,887)		(153)		(459)
Loss before income taxes		(4,884)		(20,854)		(26,556)
Income tax (benefit) expense		(5,153)		(2,078)		427
Net income (loss)		269		(18,776)		(26,983)
Net income attributable to non-controlling interests		1,489		590		348
Net loss attributable to common stockholders	\$	(1,220)	\$	(19,366)	\$	(27,331)
Depreciation and amortization expense included in the above line	_					
items:						
Network access	\$	49,766	\$	42,435	\$	27,013
Network operations		17,590		16,382		13,966
Development and technology		10,443		9,247		7,207
General and administrative		1,038		1,033		1,016
Total	\$	78,837	\$	69,097	\$	49,202
Stock-based compensation expense included in the above line items:						
Network operations	\$	2,070	\$	2,174	\$	2,144
Development and technology		1,242		1,068		1,070
Selling and marketing		1,868		2,060		1,842
General and administrative		7,088		8,913		7,749
Total	\$	12,268	\$	14,215	\$	12,805

<sup>(1)</sup> As noted in Item 6, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

# Depreciation and amortization expense

Depreciation expense increased \$9.7 million, or 14.1%, in 2018, as compared to 2017, and depreciation expense increased \$19.9 million, or 40.4%, in 2017, as compared to 2016, primarily due to increased depreciation and amortization expense from our increased fixed assets for our DAS build-out projects, Wi-Fi networks, and software development in those periods.

# Stock-based compensation expense

Stock-based compensation expense decreased \$1.9 million, or 13.7%, in 2018, as compared to 2017, and stock-based compensation expense increased \$1.4 million, or 11.0%, in 2017, as compared to 2016, and the changes are primarily due to stock-based compensation expense related to our performance-based RSUs.

We issue RSUs that vest over a specified service period. We also issue performance-based RSUs to executive personnel. We recognize stock-based compensation expense for performance-based RSUs when we believe that it is probable that the performance objectives will be met and based on the expected achievement levels. In 2018, 2017, and 2016, we capitalized \$0.8 million, \$0.7 million and \$0.7 million, respectively, of stock-based compensation expense.

At December 31, 2018, the total remaining stock-based compensation expense for unvested RSU awards is approximately \$9.3 million which is expected to be recognized over a weighted average period of 2.6 years.

The following table sets forth our results of operations for the specified periods as a percentage of our revenue for those periods.

	Year Ended December 31,				
	2018	2017(2)	2016(2)		
	(as a per	centage of rev	enue)		
Consolidated Statements of Operations Data:					
Revenue	100.0%	100.0%	100.0%		
Costs and operating expenses:					
Network access	45.3	44.4	43.4		
Network operations	20.8	23.3	26.6		
Development and technology	12.5	13.1	13.9		
Selling and marketing	9.0	10.2	11.8		
General and administrative	12.1	17.4	18.7		
Amortization of intangible assets	1.5	1.7	2.2		
Total costs and operating expenses	101.2	110.1	116.4		
Loss from operations	(1.2)	(10.1)	(16.4)		
Interest and other expense, net	(0.8)	(0.1)	(0.3)		
Loss before income taxes	(1.9)	(10.2)	(16.7)		
Income tax (benefit) expense	(2.1)	(1.0)	0.3		
Net income (loss)	0.1	(9.2)	(16.9)		
Net income attributable to non-controlling interests	0.6	0.3	0.2		
Net loss attributable to common stockholders	(0.5)%	(9.5)%	(17.2)%		

<sup>(2)</sup> As noted in Item 6, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

# Years ended December 31, 2018 and 2017

#### Revenue

		Y	ear Ended I	)ecer	nber 31,	
	2018		2017(3)		Change	% Change
	(iı	n the	ousands, exc	ept 1	percentages)	)
Revenue:						
DAS	\$ 95,216	\$	80,552	\$	14,664	18.2
Military/multifamily	77,721		55,129		22,592	41.0
Wholesale—Wi-Fi	47,481		31,529		15,952	50.6
Retail	17,630		24,926		(7,296)	(29.3)
Advertising and other	12,773		12,233		540	4.4
Total revenue	\$ 250,821	\$	204,369	\$	46,452	22.7
Key business metrics:						
DAS nodes	29.9		23.5		6.4	27.2
Subscribers—military	138		130		8	6.2
Subscribers—retail	122		188		(66)	(35.1)
Connects	277,744		223,960		53,784	24.0

(3) As noted in Item 6, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

*DAS.* DAS revenue increased \$14.7 million, or 18.2%, in 2018, as compared to 2017, due to a \$12.5 million increase from new build-out projects in our managed and operated locations, which is inclusive of a \$6.4 million increase resulting from the adoption of ASC 606 as of January 1, 2018, and a \$2.2 million increase in access fees, net of certain credits granted, from our telecom operators.

*Military/multifamily*. Military/multifamily revenue increased \$22.6 million, or 41.0% in 2018, as compared to 2017, primarily due to a \$11.2 million increase in multifamily revenues resulting from our Elauwit acquisition in August 2018, and a \$11.4 million increase in military subscriber revenue, which was driven primarily by the increase in military subscribers and a 11.1% increase in the average monthly revenue per military subscriber in 2018 compared to 2017.

Wholesale—Wi-Fi. Wholesale Wi-Fi revenue increased \$16.0 million, or 50.6% in 2018, as compared to 2017, due to a \$9.9 million increase in partner usage-based fees and a \$6.1 million increase in fees primarily earned from our venue partners who pay us to provide a Wi-Fi infrastructure that we install, manage and operate at their venues.

*Retail.* Retail revenue decreased \$7.3 million, or 29.3%, in 2018, as compared to 2017, due to a \$4.2 million decrease in retail subscriber revenue, which was driven primarily by the decrease in retail subscribers, and a \$3.1 million decrease in retail single-use revenue.

Advertising and other. Advertising and other revenue increased \$0.5 million, or 4.4% in 2018, as compared to 2017, primarily due to a \$0.4 million increase in advertising sales at our managed and operated locations resulting from an increase in the number of premium ad units sold.

# **Costs and Operating Expenses**

	Year Ended December 31,								
	2018		2017	Change		% Change			
	(i	n the	ousands, exc	ept j	percentages)	)			
Costs and operating expenses:									
Network access	\$ 113,572	\$	90,702	\$	22,870	25.2			
Network operations	52,215		47,615		4,600	9.7			
Development and technology	31,372		26,754		4,618	17.3			
Selling and marketing	22,647		20,933		1,714	8.2			
General and administrative	30,302		35,568		(5,266)	(14.8)			
Amortization of intangible assets	3,710		3,498		212	6.1			
Total costs and operating									
expenses	\$ 253,818	\$	225,070	\$	28,748	12.8			

Network access. Network access costs increased \$22.9 million, or 25.2%, in 2018, as compared to 2017. The increase is primarily due to a \$10.5 million increase in other direct cost of sales, a \$7.3 million increase in depreciation expense related to our increased fixed assets from our DAS build-out projects, and a \$5.4 million increase in revenue share paid to venues in our managed and operated locations. Network access includes \$9.4 million of expenses related to our multifamily operations, which we acquired in August 2018.

Network operations. Network operations expenses increased \$4.6 million, or 9.7%, in 2018, as compared to 2017, primarily due to a \$3.4 million increase in personnel related expenses, a \$1.3 million increase in hardware and software maintenance expenses, a \$1.2 million increase in depreciation expenses, and a \$0.6 million increase in network maintenance expenses. The increases were partially offset by a \$0.7 million decrease in impairment losses primarily related to construction in progress projects that were abandoned, a \$0.6 million decrease in consulting expenses and a \$0.4 million decrease in our third-party call center costs. Network operations includes \$1.1 million of expenses related to our multifamily operations, which we acquired in August 2018

Development and technology. Development and technology expenses increased \$4.6 million, or 17.3%, in 2018, as compared to 2017, primarily due to a \$1.4 million increase in personnel related expenses, a \$1.2 million increase in depreciation expense related to our increased fixed assets, a \$0.6 million increase in hardware and software maintenance expenses, a \$0.5 million increase in consulting expenses, and a \$0.3 million increase in cloud computing expenses. Development and technology include \$0.5 million of expenses related to our multifamily operations, which we acquired in August 2018.

*Selling and marketing.* Selling and marketing expenses increased \$1.7 million, or 8.2%, in 2018, as compared to 2017, primarily due to a \$1.2 million increase in personnel related expenses and a \$0.3 million increase in professional fees and consulting expenses. Selling and marketing includes \$0.6 million of expenses related to our multifamily operations, which we acquired in August 2018.

General and administrative. General and administrative expenses decreased \$5.3 million, or 14.8%, in 2018, as compared to 2017, primarily due to a \$2.8 million settlement expense accrual recorded in 2017 that did not reoccur in 2018, a \$1.3 million decrease in professional fees and consulting expenses, a \$1.3 million decrease in personnel related expenses, which was primarily due to the decrease in stock-based compensation expense, and a \$0.4 decrease in bad debt expenses. General and administrative includes \$0.8 million of expenses related to our multifamily operations, which we acquired in August 2018.

Amortization of intangible assets. Amortization of intangible assets expense increased \$0.2 million, or 6.1%, in 2018, as compared to 2017, primarily due to the \$1.0 million increase resulting from our Elauwit acquisition in August 2018, which was partially offset by certain intangible assets that became fully amortized during 2017 and 2018.

# Interest and Other Expense, Net

Interest and other expense increased \$1.7 million, or 1,133.3%, in 2018, as compared to 2017, primarily due to interest expense incurred related to the Convertible Notes we issued in October 2018. We capitalized \$1.1 million and \$0.8 million of interest expense to capital projects in 2018 and 2017, respectively.

# Income Tax (Benefit) Expense

In December 2017, the Tax Cuts and Jobs Act ("TCJA") was enacted in the U.S. TCJA amended the Internal Revenue Code of 1986 and included the following key provisions, which are generally effective for tax years beginning after December 31, 2017, that are determined to have a significant impact on our effective tax rate:

- Reduction of the corporate federal tax rate to 21%;
- Permanent repeal of the alternative minimum tax regime with refunds of excess carryforwards;
- For any net operating losses ("NOLs") generated in tax years beginning after December 31, 2017, repeals carryback ability but permits indefinite carryforward subject to a limitation of utilization to 80% of taxable income;
- For executive compensation in excess of \$1 million, changes covered employees to principal executive officer, principal financial officer, and three other highest paid officers; eliminates the "last day of the tax year" language for determination of a covered employee; removes exceptions for commissions and performance-based compensation; and employees that are covered persons remain covered persons for all future years;
- Permits 100% bonus depreciation for eligible property placed in-service after September 27, 2017 and before January 1, 2023;
- Disallows interest expense in excess of 30% of adjusted taxable income, which excludes deductions for depreciation, amortization, or depletion for taxable years beginning after December 31, 2017 and before January 1, 2022 only, but permits indefinite carryforward; and
- Expands income exclusions and/or deduction limitations for certain fringe benefits that we may offer to our employees.

We completed our assessment of the impact of TCJA on our consolidated financial statements as of December 31, 2017 and recorded the impact of the enactment of TCJA in our consolidated financial statements for the year ended December 31, 2017.

In 2018, we recorded an income tax benefit of \$5.2 million, or an effective tax rate of 105.5%, which was inclusive of a \$5.7 million benefit related to the reversal of our valuation allowance for the tax effect on the equity component of our Convertible Notes. In 2017, we recorded an income tax benefit of \$2.1 million, or an effective tax rate of 10.0%, which was inclusive of a \$1.3 million income tax benefit resulting from the reduction of the corporate federal tax rate, as well as a \$1.7 million income tax benefit provided by the indefinite carryforward of NOLs, which were expected to be available to recover our deferred tax liabilities that have an indefinite reversal pattern. Our effective tax rate also differs from the statutory rate primarily due to our valuation allowance for the years ended December 31, 2018 and 2017, as well as minimum state taxes and foreign tax expense for the year

ended December 31, 2018. Income tax benefit for the year ended December 31, 2018 included an increase of \$0.4 million resulting from the adoption of ASC 606 as of January 1, 2018.

Our future effective tax rate depends on various factors, such as our level of future taxable income, tax legislation and credits and the geographic compositions of our pre-tax income. We do not expect to incur any significant income taxes until such time that we reverse our valuation allowance against our federal and state deferred tax assets upon return to sustained profitability.

# **Non-controlling Interests**

Non-controlling interests increased \$0.9 million, or 152.4% in 2018, as compared to 2017. Non-controlling interests for the year ended December 31, 2018 included an increase of \$1.7 million resulting from the adoption of ASC 606 as of January 1, 2018, which was partially offset by increased depreciation expense related to our increased fixed assets in 2018, as compared to 2017.

#### Net Loss Attributable to Common Stockholders

Our net loss attributable to common stockholders in 2018 decreased \$18.1 million as compared to 2017, primarily due to the \$46.5 million increase in revenues and the \$3.1 million increase in income tax benefit, which were partially offset by the \$28.7 million increase in costs and operating expenses, the \$1.7 million increase in interest and other expense, net, and the \$0.9 million increase in non-controlling interests. Our diluted net loss per share decreased primarily as a result of the decrease in our net loss.

# Adjusted EBITDA

Adjusted EBITDA was \$91.8 million in 2018, an increase of 33.2% from \$68.9 million recorded in 2017. As a percent of revenue, Adjusted EBITDA was 36.6% in 2018, up from 33.7% in 2017. The Adjusted EBITDA increase was due primarily to the \$18.1 million decrease in our net loss attributable to common stockholders, an increase of \$10.0 million for the addback of depreciation and amortization expense, a \$1.7 million increase for the addback of interest and other expense, net and a \$0.9 million increase for the addback of non-controlling interests in 2018 compared to 2017. The changes were partially offset by the \$2.8 million decrease in settlement expense accrual recorded in 2017 that did not reoccur in 2018, a \$3.1 million increase for the deduction for income tax benefit, and the \$1.9 million decrease for the addback for stock-based compensation expense. We define Adjusted EBITDA as net loss attributable to common stockholders plus depreciation and amortization of property and equipment, stock-based compensation expense, amortization of intangible assets, income tax (benefit) expense, interest and other expense, net, non-controlling interests, and excludes charges or gains that are non-recurring, infrequent, or unusual. For a discussion of Adjusted EBITDA and a reconciliation of net loss attributable to common stockholders to Adjusted EBITDA, see footnote 1 to "Selected Financial Data" in Part II, Item 6.

# Years ended December 31, 2017 and 2016

#### Revenue

	Year Ended December 31,							
		2017(4)	_	2016(4)	_	Change	% Change	
		(in	n the	ousands, exc	ept 1	percentages)	)	
Revenue:								
DAS	\$	80,552	\$	58,182	\$	22,370	38.4	
Military		55,129		39,975		15,154	37.9	
Wholesale—Wi-Fi		31,529		22,221		9,308	41.9	
Retail		24,926		26,636		(1,710)	(6.4)	
Advertising and other		12,233		12,330		(97)	(0.8)	
Total revenue	\$	204,369	\$	159,344	\$	45,025	28.3	
Key business metrics:								
DAS nodes		23.5		19.2		4.3	22.4	
Subscribers—military		130		107		23	21.5	
Subscribers—retail		188		195		(7)	(3.6)	
Connects		223,960		142,802		81,158	56.8	

(4) As noted in Item 6, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

DAS. DAS revenue increased \$22.4 million, or 38.4%, in 2017, as compared to 2016, due to a \$20.5 million increase from new build-out projects in our managed and operated locations and a \$1.9 million increase in access fees from our telecom operators. DAS build-out revenues in 2017 and 2016 include \$0.2 million and \$0.5 million, respectively, of short-term build projects that include sales of equipment that were completed during those periods.

*Military*. Military revenue increased \$15.2 million, or 37.9%, in 2017, as compared to 2016 due to a \$19.2 million increase in military subscriber revenue, which was driven primarily by the increase in military subscribers and a 1.7% increase in the average monthly revenue per military subscriber in 2017 compared to 2016. The increase was partially offset by a \$4.0 million decrease in military single-use revenue.

Wholesale—Wi-Fi. Wholesale Wi-Fi revenue increased \$9.3 million, or 41.9%, in 2017, as compared to 2016, due to a \$7.3 million increase in partner usage-based fees and a \$2.0 million increase in fees primarily earned from our venue partners who pay us to provide a Wi-Fi infrastructure that we install, manage and operate at their venues.

Retail. Retail revenue decreased \$1.7 million, or 6.4%, in 2017, as compared to 2016, primarily due to a \$1.6 million decrease in retail single-use revenue.

Advertising and other. Advertising and other revenue decreased \$0.1 million, or 0.8%, in 2017, as compared to 2016, due to a \$0.7 million decrease in advertising sales at our managed and operated locations, which was partially offset by a \$0.6 million increase in revenues from other service agreements.

# **Costs and Operating Expenses**

	Year Ended December 31,										
	2017			2016	Change		% Change				
		(i	n the	ousands, exc	)						
Costs and operating expenses:											
Network access	\$	90,702	\$	69,112	\$	21,590	31.2				
Network operations		47,615		42,307		5,308	12.5				
Development and technology		26,754		22,126		4,628	20.9				
Selling and marketing		20,933		18,729		2,204	11.8				
General and administrative		35,568		29,719		5,849	19.7				
Amortization of intangible assets		3,498		3,448		50	1.5				
Total costs and operating											
expenses	\$	225,070	\$	185,441	\$	39,629	21.4				

*Network access.* Network access costs increased \$21.6 million, or 31.2%, in 2017, as compared to 2016. The increase is primarily due to a \$15.4 million increase in depreciation expense related to our increased fixed assets from our DAS build-out projects, a \$5.2 million increase in revenue share paid to venues in our managed and operated locations, and a \$0.8 million increase from customer usage at partner venues.

*Network operations.* Network operations expenses increased \$5.3 million, or 12.5%, in 2017, as compared to 2016, due to a \$2.4 million increase in depreciation expense related to our increased fixed assets, a \$1.5 million increase in personnel related expenses, and a \$1.3 million increase in other expenses. Other expenses for 2017 and 2016 include \$0.9 million and \$0.1 million, respectively, of impairment losses primarily related to construction in progress projects that were abandoned.

Development and technology. Development and technology expenses increased \$4.6 million, or 20.9%, in 2017, as compared to 2016, due to a \$2.0 million increase in depreciation expense related to our increased fixed assets, a \$1.8 million increase in personnel related expenses, and a \$0.8 million increase in cloud computing expenses.

Selling and marketing. Selling and marketing expenses increased \$2.2 million, or 11.8%, in 2017, as compared to 2016, primarily due to a \$1.6 million increase in personnel related expenses, a \$0.3 million increase in marketing and advertising expenses, and a \$0.2 million increase in other consulting expenses.

General and administrative. General and administrative expenses increased \$5.8 million, or 19.7%, in 2017, as compared to 2016, due to a \$2.8 million settlement expense accrual related to a claim from one of our venue partners recorded in 2017, a \$2.6 million increase in personnel related expenses, which was inclusive of a \$1.2 million increase in stock-based compensation, a \$1.5 million increase in professional fees and consulting expenses, and a \$0.7 million increase in bad debt expenses. The increases were partially offset by \$1.4 million of costs we incurred in 2016 on our contested proxy election for the 2016 annual meeting of stockholders and a \$0.4 million decrease in other expenses.

Amortization of intangible assets. Amortization of intangible assets expense remained relatively consistent in 2017, as compared to 2016.

# Interest and Other Expense, Net

There were no significant changes in interest and other expense, net, in 2017, as compared to 2016. We capitalized \$0.8 million of interest expense to capital projects in each of the years ended December 31, 2017 and 2016.

# Income Tax (Benefit) Expense

In 2017, we recorded an income tax benefit of \$2.1 million, or an effective tax rate of 10.0%, which is inclusive of a \$1.3 million income tax benefit resulting from the reduction of the corporate federal tax rate as well as a \$1.7 million income tax benefit provided by the indefinite carryforward of NOLs, which are expected to be available to recover our deferred tax liabilities that have an indefinite reversal pattern. In 2016, we recorded an income tax expense of \$0.4 million, or an effective tax rate of 1.6%.

# **Non-controlling Interests**

There were no significant changes in non-controlling interests in 2017, as compared to 2016.

#### Net Loss Attributable to Common Stockholders

Our net loss in 2017 decreased as compared to 2016, primarily as a result of the \$45.0 million increase in revenues and the \$2.5 million change in our income taxes, which were partially offset by the \$39.6 million increase in costs and operating expenses. Our diluted net loss per share decreased primarily as a result of the decrease in our net loss.

# Adjusted EBITDA

Adjusted EBITDA was \$68.9 million in 2017, an increase of 68.9% from \$40.8 million recorded in 2016. As a percent of revenue, Adjusted EBITDA was 33.7% in 2017, up from 25.6% of revenue in 2016. The Adjusted EBITDA increase was due primarily to the \$19.9 million increase in depreciation and amortization expense, the \$8.0 million decrease in our net loss attributable to common stockholders, and the \$1.4 million increase in stock-based compensation expenses in 2017 compared to 2016. The changes were partially offset by the \$2.5 million change in our income taxes in 2017 compared to 2016. Adjusted EBITDA in 2017 excludes \$2.8 million of settlement expense accrual related to a claim from one of our venue partners. Adjusted EBITDA in 2016 excludes \$1.4 million of expenses that we incurred on our contested proxy election for the 2016 annual meeting of stockholders. We define Adjusted EBITDA as net loss attributable to common stockholders plus depreciation and amortization of property and equipment, stock-based compensation expense, amortization of intangible assets, income tax (benefit) expense, interest and other expense, non-controlling interests, and excludes charges or gains that are non-recurring, infrequent, or unusual. For a discussion of Adjusted EBITDA and a reconciliation of net loss attributable to common stockholders to Adjusted EBITDA, see footnote 1 to "Selected Financial Data" in Part II, Item 6.

# **Liquidity and Capital Resources**

We have financed our operations primarily through cash provided by operating activities and borrowings under our credit facility. Our primary sources of liquidity as of December 31, 2018 consisted of \$149.4 million of cash and cash equivalents. At December 31, 2018, we had \$8.2 million of outstanding Letter of Credit Authorization agreements.

Our principal uses of liquidity have been to fund our operations, working capital requirements, capital expenditures and acquisitions. We expect that these requirements will be our principal needs for liquidity over the near term. Our capital expenditures in 2018 were \$108.7 million, of which \$82.7 million was reimbursed through revenue for DAS build-out projects from our telecom operators.

In February 2019, we entered into a new Credit Agreement (the "New Credit Agreement") and related agreements with Bank of America, N.A. acting as agent for lenders named therein, including Bank of America, N.A., Silicon Valley Bank, Bank of the West, Zions Bancorporation, N.A. dba California Bank & Trust, and Barclays Bank PLC (the "Lenders"), for a secured credit facility in the

form of a revolving line of credit up to \$150.0 million (the "Revolving Line of Credit") and a term loan of \$3.5 million (the "Term Loan" and together with the Revolving Line of Credit, the "New Credit Facility"). The New Credit Facility replaced the November 2014 Credit Facility with Bank of America, N.A. acting as agent for lenders named therein, which expired on November 21, 2018. Our New Credit Facility will mature on April 3, 2023. Amounts borrowed under the Revolving Line of Credit and Term Loan will bear variable interest at the greater of LIBOR plus 1.75% - 2.75% or Lender's Prime Rate plus 0.75% - 1.75% per year and we will pay a fee of 0.25% - 0.5% per year on any unused portion of the Revolving Line of Credit.

Repayment of amounts borrowed under the New Credit Facility may be accelerated in the event that we are in violation of the representation, warranties and covenants made in the Credit Agreement, including certain financial covenants set forth therein, and under other specific default events including, but not limited to, non-payment or inability to pay debt, breach of cross default provisions, insolvency provisions, and change in control. We are subject to customary covenants, including a minimum quarterly consolidated senior secured leverage ratio, a minimum quarterly consolidated total leverage ratio, a maximum quarterly consolidated fixed charge coverage ratio, and cash on hand minimums. We were in compliance with all such financial and non-financial covenants through the date of this report. The New Credit Facility provides us with significant additional flexibility and liquidity to pursue our strategic objectives for capital expenditures and acquisitions that we may pursue from time to time.

In October 2018, we sold, through the initial purchasers, convertible senior notes ("Convertible Notes") to qualified institutional buyers pursuant to Rule 144A of the Securities Act of 1933, as amended, for gross proceeds of \$201.25 million. The Convertible Notes are senior, unsecured obligations with interest payable semi-annually in cash at a rate of 1.00% per annum on April 1st and October 1st of each year, beginning on April 1, 2019. The Convertible Notes will mature on October 1, 2023 unless they are redeemed, repurchased or converted prior to such date. Prior to April 1, 2023, the Convertible Notes are convertible at the option of holders only during certain periods and upon satisfaction of certain conditions. Thereafter, the Convertible Notes will be convertible at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Upon conversion, the Convertible Notes may be settled in shares of our common stock, cash or a combination of cash and shares of our common stock, at our election.

The Convertible Notes have an initial conversion rate of 23.6323 shares of common stock per \$1,000 principal amount of the Convertible Notes, which will be subject to customary anti-dilution adjustments in certain circumstances. This represents an initial effective conversion price of approximately \$42.31 per share, which represents a premium of approximately 30% to the \$32.55 per share closing price of our common stock on October 2, 2018, the day we priced the offering.

We may redeem all or any portion of the Convertible Notes, at our option, on or after October 5, 2021, at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date, if the last reported sale price of our stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which we provide written notice of redemption.

Holders of Convertible Notes may require us to repurchase their Convertible Notes upon the occurrence of certain events that constitute a fundamental change under the indenture governing the Convertible Notes at a fundamental change repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the date of repurchase. In connection with certain corporate events or if we issue a notice of redemption prior to the maturity date, it will, under certain circumstances, increase the conversion rate for holders who elect to convert their Convertible Notes in connection with such corporate event or notice of redemption.

In connection with the pricing of the Convertible Notes, we entered into privately negotiated capped call transactions with a financial institution. The capped call transactions initially cover, subject to customary anti-dilution adjustments, the number of shares of our common stock that initially underlie the Convertible Notes. The cap price of the capped call transactions is initially \$65.10 per share of our common stock, representing a premium of 100% above the closing price of \$32.55 per share of our common stock on October 2, 2018, and is subject to certain adjustments under the terms of the capped call transactions. The capped call transactions are expected generally to reduce potential dilution to our common stock upon conversion of the Convertible Notes and/or offset the potential cash payments that we could be required to make in excess of the principal amount of any converted Convertible Notes upon conversion thereof, with such reduction and/or offset subject to a cap based on the cap price. We paid approximately \$24.0 million for the capped call transactions using a portion of the gross proceeds from the sale of the Convertible Notes.

In connection with the offering of the Convertible Notes, we entered into an amendment to the November 2014 Credit Agreement that amended certain provisions of the November 2014 Credit Agreement to provide for the consummation of the offering and issuance of the Convertible Notes and the incurrence of the debt, and the execution of the capped call transactions

We believe that our existing cash and cash equivalents, cash flow from operations and availability under the New Credit Facility will be sufficient to fund our operations and planned capital expenditures for at least the next 12 months from the date of issuance of our financial statements. There can be no assurance, however, that future industry-specific or other developments, general economic trends, or other matters will not adversely affect our operations or our ability to meet our future cash requirements. Our future capital requirements will depend on many factors, including our rate of revenue growth and corresponding timing of cash collections, the timing and size of our managed and operated location expansion efforts, the timing and extent of spending to support product development efforts, the timing of introductions of new solutions and enhancements to existing solutions and the continuing market acceptance of our solutions. We expect our capital expenditures for 2019 will range from \$10.0 million to \$120.0 million, including \$75.0 million to \$90.0 million of capital expenditures for DAS build-out projects which are reimbursed through revenue from our telecom operator customers. We anticipate the majority of our 2019 capital expenditures will be used to build out and upgrade Wi-Fi and DAS networks at our managed and operated venues. We used \$15.0 million of the net proceeds from the offering of the Convertible Notes to repay the outstanding balance under our previous Credit Facility and we expect to use the remainder of the net proceeds from the offering of the Convertible Notes for general corporate purposes, potential acquisitions and strategic transactions, although we have no agreements or understandings with respect to any acquisitions or strategic transactions at this time and may not enter into any or consummate any transaction. We may also use a portion of the net proceeds for ongoing repurchases of common stock to satisfy withholding obligations related to vesting and settlement of RSUs.

We have contracts with the U.S. government. The U.S. government may modify, curtail or terminate its contracts with us, either at its convenience or for default based on performance. Any such modification, curtailment, or termination of one or more of our government contracts could have a material adverse effect on our earnings, cash flow and/or financial position. We may also enter into other acquisitions of complementary businesses, applications or technologies, which could require us to seek additional equity or debt financing. Additional funds may not be available on terms favorable to us, or at

The following table sets forth cash flow data for the periods indicated therein:

	Year Ended December 31,							
	2018			2017		2016		
			(in t	thousands)				
Net cash provided by operating activities	\$	93,321	\$	97,728	\$	115,205		
Net cash used in investing activities		(133,354)		(74,458)		(107,331)		
Net cash provided by (used in) financing								
activities		162,825		(16,054)		(3,121)		

# **Net Cash Provided by Operating Activities**

In 2018, we generated \$93.3 million of net cash from operating activities, a decrease of \$4.4 million from 2017. The decrease is primarily due to a \$29.3 million change in our operating assets and liabilities, which is primarily driven by a lower rate of cash collections and invoicing for our DAS build-out projects, a \$3.0 million increase in the change in our deferred income taxes, a \$1.9 million change in stock-based compensation expenses, a \$0.9 million decrease in the addback for impairment loss and loss on disposal of fixed assets, net, and a \$0.4 million change in bad debt expense in 2018. The changes were partially offset by a \$19.0 million reduction of our net loss, a \$10.0 million change in depreciation and amortization expenses primarily related to our recent increased fixed assets from our DAS build-out projects, Wi-Fi networks, and software development, a \$2.2 million increase in the addback for amortization of deferred financing costs and debt discounts.

In 2017, we generated \$97.7 million of net cash from operating activities, a decrease of \$17.5 million from 2016. The decrease is primarily due to a \$46.0 million non-cash change in our operating assets and liabilities and a \$2.9 million change in our deferred income taxes. The change was partially offset by a \$19.9 million increase in depreciation and amortization expenses related to our recent increased fixed assets from our DAS build-out projects, Wi-Fi networks, and software development, an \$8.2 million decrease in our net loss, a \$1.4 million increase in stock-based compensation expenses, a \$0.7 million increase in bad debt expenses, and a \$1.1 million increase in impairment losses and losses on disposal of fixed assets, net.

In 2016, we generated \$115.2 million of net cash from operating activities, an increase of \$16.6 million from 2015. The increase is primarily due to a \$7.4 million change in our operating assets and liabilities, a \$10.8 million increase in depreciation and amortization expenses related to our recent increased fixed assets from our DAS build-out projects, Wi-Fi networks, and software development, and a \$3.4 million increase in stock-based compensation expenses. The increases were partially offset by the \$4.8 million increase in our net loss.

# Net Cash Used in Investing Activities

In 2018, we used \$133.4 million in investing activities, an increase of \$58.9 million from 2017. The increase is due to a \$35.4 million increase in purchases of property and equipment and a \$23.5 million increase in cash paid for asset and business acquisitions.

In 2017, we used \$74.5 million in investing activities, a decrease of \$32.9 million from 2016. The decrease is primarily due to a \$34.0 million decrease in purchases of property and equipment, which was partially offset by \$1.2 million of cash paid for a caching technology intangible asset, which we acquired in November 2016.

In 2016, we used \$107.3 million in investing activities, an increase of \$5.8 million from 2015. This increase is due to a \$4.2 million increase in purchases of property and equipment related to our recent increased fixed assets from our DAS build-out projects, Wi-Fi networks, and software development, and a \$1.6 million decrease in cash provided by net proceeds from sales of marketable securities.

# Net Cash Provided by (Used in) Financing Activities

In 2018, we received \$162.8 million of cash provided by financing activities, an increase of \$178.9 million from 2017. This increase is due to a \$195.7 million increase in net proceeds from our Convertible Notes offering, a \$15.0 million increase in proceeds from our Credit Facility, and a \$0.7 million increase in proceeds from exercise of stock options. The increases were partially offset by a \$24.0 million payment for capped call options in connection with the Convertible Notes offering, a \$5.7 million increase in payments for federal, state, and local employment payroll taxes related to our RSUs that vested during the period, a \$2.0 million increase in principal payments for our capital leases and notes payable, a \$0.7 million increase in cash paid for debt issuance costs, and a \$0.5 million increase in cash payments to our non-controlling interests.

In 2017, we used \$16.1 million of cash in financing activities, an increase of \$12.9 million from 2016. This change is primarily due to a \$10.4 million increase in payments on our Credit Facility, a \$5.0 million decrease in proceeds from our Credit Facility, a \$2.0 million increase in cash used to pay federal, state, and local employment payroll taxes related to our RSUs that vested during the period, and a \$2.0 million increase in cash paid for our capital leases and notes payable. The changes were partially offset by a \$6.3 million increase in proceeds from exercise of stock options.

In 2016, we used \$3.1 million of cash for financing activities compared to \$8.8 million in cash provided by financing activities in 2015. This change is primarily due to a \$14.8 million decrease in net proceeds from our Credit Facility, a \$1.4 million increase in cash paid for capital leases and notes payable, and a \$0.3 million decrease in cash used to pay federal, state, and local employment payroll taxes related to our RSUs that vested during the period. These changes were partially offset by a \$1.6 million increase in proceeds from exercise of stock options, \$2.8 million of non-recurring payments made in 2015 related to business combinations, and a \$0.2 million decrease in payments to our non-controlling interests.

# **Contractual Obligations and Commitments**

The following table sets forth our contractual obligations and commitments as of December 31, 2018:

	Payments Due by Period									
	Total		Less than 1 Year		2 - 3 Years (in thousands)		4 - 5 Years		More than 5 Years	
Venue revenue share minimums(1)	\$	49,625	\$	14,638	\$	15,788	\$	10,312	\$	8,887
Operating leases for office and other										
spaces(2)		26,158		3,573		6,841		6,909		8,835
Open purchase commitments(3)		32,769		32,168		601		_		_
Convertible Notes(4)		201,250		_				201,250		_
Capital leases and notes payable for										
equipment and software(5)		11,523		6,612		4,911		_		_
Total	\$	321,325	\$	56,991	\$	28,141	\$	218,471	\$	17,722

- (1) Payments under exclusive long-term, non-cancellable contracts to provide wireless communications network access to venues such as airports. Expense is recorded on a straight-line basis over the term of the lease.
- (2) Office and other spaces under non-cancellable operating leases.
- (3) Open purchase commitments are for the purchase of property and equipment, supplies and services. They are not recorded as liabilities on our consolidated balance sheet as of December 31, 2018 as we have not received the related goods or services.

- (4) Long-term debt associated with our Convertible Notes are based on contractual terms and intended timing of repayments of long-term debt
- (5) Payments under non-cancellable capital leases and loans payable related to equipment, primarily for data communication and database software, and prepaid maintenance service purchases.

# **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet financing arrangements and we do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

# **Transactions with Related Parties**

Under our Audit Committee charter, our Audit Committee is responsible for reviewing and approving all related party transactions on a quarterly basis. In addition, our Board of Directors determines annually whether any related party relationships exist among the directors which would interfere with the judgment of individual directors in carrying out his responsibilities as director.

# Inflation

Inflationary factors have not had a significant effect on our performance over the past several years. A significant increase in inflation may affect our future performance since we may not be able to recover the increases in our costs with similar increases in our prices.

# Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the potential loss arising from adverse changes in the value of financial instruments. The risk of loss is assessed based on the likelihood of adverse changes in fair values, cash flows or future earnings.

We have established guidelines relative to the diversification and maturities of investments to maintain safety and liquidity. These guidelines are reviewed periodically and may be modified depending on market conditions. Although investments may be subject to credit risk, our investment policy specifies credit quality standards for our investments and limits the amount of credit exposure from any single issue, issuer, or type of investment. At December 31, 2018, we did not have any investments in marketable securities. In January 2019, we began investing in marketable available-for-sale securities comprised primarily of short-term commercial paper, corporate debt instruments and US treasury and agencies obligations.

Our marketable available-for-sale securities are carried at fair value and are intended for use in meeting our ongoing liquidity needs. Unrealized gains and losses on available-for-sale securities, which are deemed temporary, are reported as a separate component of stockholders' equity, net of tax. The cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. The amortization, along with realized gains and losses, would be included in interest and other expense, net.

We are exposed to various market risks including: (i) interest rate risk and (ii) foreign currency exchange rate risk.

*Interest rate risk.* Our Convertible Notes bear a coupon rate of 1.00% per annum. Our New Credit Facility bears interest at a variable rate equal to the greater of LIBOR plus 1.75% - 2.75% or the Lender's Prime Rate plus 0.75% - 1.75% per year. Our use of variable rate debt exposes us to interest rate risk. A 100-basis point increase in the LIBOR or Lender's Prime Rate as of December 31,

2018 would not have any impact on net loss and cash flow as we had no amounts outstanding under the New Credit Facility as of December 31, 2018.

Foreign currency exchange rate risk. We are exposed to foreign currency exchange rate risk inherent in conducting business globally in numerous currencies, of which the most significant to our operations for the year ended December 31, 2018 was the Brazilian Real. We are primarily exposed to foreign currency fluctuations related to the operations of our subsidiary in Brazil whose financial statements are not denominated in the U.S. dollar. Our foreign operations are not material to our operations as a whole. As such, we currently do not enter into currency forward exchange or option contracts to hedge foreign currency exposures.

# Item 8. Financial Statements and Supplementary Data

The information required by this Item is included in Part IV, Items 15(a)(1) and (2) of this Annual Report on Form 10-K.

# Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

# Item 9A. Controls and Procedures

# **Disclosure Controls and Procedures**

The Company maintains a system of disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in the reports that the Company files or submits under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is processed, recorded, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. These disclosure controls and procedures include, among other processes, controls and procedures designed to ensure that information required to be disclosed in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer (our principal executive officer and principal financial officer, respectively), as appropriate, to allow for timely decisions regarding required disclosure.

The Company carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2018 pursuant to Exchange Act Rule 13a-15. Based upon that evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures, as defined in Exchange Act Rule 13a-15(e) and 15d-15(e), were effective as of the end of the period covered by this Annual Report.

# Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting at the Company. Our internal control over financial reporting is a process designed under the supervision of our Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external reporting purposes in accordance with GAAP. A company's internal control over financial reporting includes those policies and procedures that:

• pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;

- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and the directors of the Company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's
  assets that could have a material effect on the financial statements.

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

Under the supervision and with the participation of management, including the certifying officers, the Company conducted an evaluation of the effectiveness of the Company's internal control over financial reporting as of December 31, 2018 based on the framework in *Internal Control—Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Management's assessment included an evaluation of the design of the Company's internal control over financial reporting and testing of the operational effectiveness of its internal control over financial reporting.

Management has excluded Boingo MDU, LLC, a wholly owned subsidiary of the Company formed in 2018, from its assessment of internal control over financial reporting as of December 31, 2018 because Boingo MDU, LLC acquired the assets of Elauwit Networks, LLC in August 2018 and such assets comprise substantially all of the assets of Boingo MDU, LLC. Boingo MDU, LLC's total assets and total revenues represent 5.3% and 4.5%, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2018.

Based on this assessment, management determined that, as of December 31, 2018, the Company maintained effective internal control over financial reporting. The effectiveness of the Company's internal control over financial reporting has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm. The registered public accounting firm's audit of internal control over financial reporting also excluded Boingo MDU, LLC. The Report of Independent Registered Public Accounting Firm is filed with this Annual Report on Form 10-K in a separate section following Part IV, as shown on the index under Item 15 of this Annual Report.

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

Throughout 2018, in order to facilitate the adoption of the new lease accounting standard on January 1, 2019, we implemented internal controls to help ensure we properly evaluated our lease contracts and assessed the impact to our consolidated financial statements. We expect to continue to implement additional internal controls related to the adoption of this standard in the first quarter of 2019.

There have been no other changes in the Company's internal control over financial reporting (as defined by Exchange Act Rule 13a-15(f) and 15d-15 (f)) that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting during the quarter ended December 31, 2018.

# Item 9B. Other Information

On February 26, 2019, we entered into a new Credit Agreement (the "New Credit Agreement") and related agreements with Bank of America, N.A. acting as agent for lenders named therein, including Bank of America, N.A., Silicon Valley Bank, Bank of the West, Zions Bancorporation, N.A.

dba California Bank & Trust, and Barclays Bank PLC (the "Lenders"), for a secured credit facility in the form of a revolving line of credit up to \$150.0 million (the "Revolving Line of Credit") and a term loan of \$3.5 million (the "Term Loan" and together with the Revolving Line of Credit, the "New Credit Facility"). Our New Credit Facility will mature on April 3, 2023. Amounts borrowed under the Revolving Line of Credit and Term Loan will generally bear variable interest at the greater of LIBOR plus 1.75% - 2.75% or Lender's Prime Rate plus 0.75% - 1.75% per year and we will pay a fee of 0.25% -0.5% per year on any unused portion of the Revolving Line of Credit. We may use borrowings under the New Credit Facility for general working capital and corporate purposes. In general, amounts borrowed under the New Credit Facility are secured by a lien against all of our assets, with certain exclusions.

The Term Loan requires quarterly payments of interest and principal, amortizing fully over the term such that it is repaid in full on the maturity date of April 3, 2023, but may be prepaid in whole or part at any time. Repayment of amounts borrowed under the New Credit Facility may be accelerated in the event that we are in violation of the representation, warranties and covenants made in the Credit Agreement, including certain financial covenants set forth therein, and under other specific default events including, but not limited to, non-payment or inability to pay debt, breach of cross default provisions, insolvency provisions, and change in control. We are subject to customary covenants, including a minimum quarterly consolidated senior secured leverage ratio, a minimum quarterly consolidated total leverage ratio, a maximum quarterly consolidated fixed charge coverage ratio, and cash on hand minimums.

Bank of America N.A., Silicon Valley Bank and the other lender parties to the New Credit Agreement, and certain of their respective affiliates, have provided, and in the future may provide, financial, banking and related services to us. These parties have received, and in the future may receive, compensation from us for these services.

The foregoing description of the New Credit Facility does not purport to be complete and is qualified in its entirety by reference to the New Credit Agreement and related agreements, copies of which are filed as Exhibit 10.32 with this Annual Report on Form 10-K.

## PART III

## Item 10. Directors, Executive Officers and Corporate Governance

The information required by Item 10 will be included in the Company's definitive Proxy Statement under the caption "Directors, Executive Officers and Corporate Governance" and "Section 16(a) Beneficial Ownership Reporting Compliance," to be filed with the Commission within 120 days after the end of fiscal year 2018 pursuant to Regulation 14A, which information is incorporated herein by this reference.

## **Item 11. Executive Compensation**

The Company maintains employee benefit plans and programs in which its executive officers are participants. Copies of certain of these plans and programs are set forth or incorporated by reference as Exhibits to this report. Information required by Item 11 will be included in the Company's definitive Proxy Statement under the captions "Director Compensation," "Executive Compensation," "Compensation Discussion and Analysis," and "Directors, Executive Officers and Corporate Governance," to be filed with the Commission within 120 days after the end of fiscal year 2018 pursuant to Regulation 14A, which information is incorporated herein by this reference.

## Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by Item 12 will be included in the Company's definitive Proxy Statement under the caption "Security Ownership of Certain Beneficial Owners and Management," to be filed with the Commission within 120 days after the end of fiscal year 2018 pursuant to Regulation 14A, which information is incorporated herein by this reference. The information required to be disclosed by Item 201(d) of Regulation S-K regarding our equity securities authorized for issuance under our equity incentive plans is incorporated herein by reference to the section entitled "Securities Authorized for Issuance under Equity Compensation Plans" in our definitive Proxy Statement for our Annual Meeting of Stockholders to be filed with the Commission within 120 days after the end of fiscal year 2018 pursuant to Regulation 14A.

## Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by Item 13 of Form 10-K regarding transactions with related persons, promoters and certain control persons, if any, will be included in the Company's definitive Proxy Statement under the caption "Certain Relationships and Related Party Transactions" to be filed with the Commission within 120 days after the end of fiscal year 2018 pursuant to Regulation 14A, which information is incorporated herein by this reference. The information required by Item 13 of Form 10-K regarding director independence will be included in the Company's definitive Proxy Statement under the caption "Directors, Executive Officers and Corporate Governance—Corporate Governance and Board Matters—Independence of the Board of Directors," to be filed with the Commission within 120 days after the end of fiscal year 2018 pursuant to Regulation 14A, which information is incorporated herein by this reference.

## Item 14. Principal Accounting Fees and Services

The information required by Item 14 will be included in the Company's definitive Proxy Statement under the caption "Independent Registered Public Accounting Firm" to be filed with the Commission within 120 days after the end of fiscal year 2018 pursuant to Regulation 14A, which information is incorporated herein by this reference.

## PART IV

# Item 15. Exhibits

- (a) The following documents are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K:
  - (1)(2) Financial Statements. The following consolidated financial statements of Boingo Wireless, Inc., and Report of Independent Registered Public Accounting Firm are included in a separate section of this Annual Report on Form 10-K beginning on page F-1.

	Page
<u>Description</u>	Number
Report of Independent Registered Public Accounting Firm	<u>F-2</u>
Consolidated Balance Sheets as of December 31, 2018 and 2017	<u>F-4</u>
Consolidated Statements of Operations for the Years Ended December 31, 2018, 2017 and 2016	<u>F-5</u>
Consolidated Statements of Comprehensive Income (Loss) for the Years Ended December 31, 2018,	
<u>2017 and 2016</u>	<u>F-6</u>
Consolidated Statements of Stockholder's Equity for the Years Ended December 31, 2018, 2017 and	
<u>2016</u>	<u>F-7</u>
Consolidated Statements of Cash Flows for the Years Ended December 31, 2018, 2017 and 2016	<u>F-8</u>
Notes to Consolidated Financial Statements	<u>F-9</u>

All financial statement schedules have been omitted because the required information is not applicable or not present in amounts sufficient to require submission of the schedule, or because the information required is included in our consolidated financial statements or the notes thereto.

(3) *Exhibits*. The exhibits listed under Item 15(b) hereof are filed with, or incorporated by reference into, this Annual Report on Form 10-K. Each management contract or compensatory plan or arrangement is identified separately in item 15(b) hereof.

(b) The following exhibits are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K:

			Incorporated by Reference				
Exhibit No.	Description	Form	Date	Number	Filed ber Herewith		
3.1	Amended and Restated Certificate of Incorporation.	S-1	03/21/2011	3.2			
3.2	Certificate of Amendment to the Certificate of Incorporation.	8-K	06/09/2017	3.1			
3.3	Amended and Restated Bylaws.	8-K	06/09/2017	3.2			
4.1	Amendment No. 1 to Amended and Restated Investor Rights Agreement, dated April 12, 2011.	S-1	04/13/2011	4.1			
4.2	Amended and Restated Investor Rights Agreement among the Registrant and certain stockholders, dated June 27, 2006.	S-1	01/14/2011	4.2			
4.3	Indenture (including form of Note) with respect to the Company's 1.00% Convertible Senior Notes due 2023, dated as of October 5, 2018, between the Company and Wilmington Trust, National Association, as trustee.	8-K	10/05/2018	4.1			
10.1	Form of Indemnification Agreement to be entered into between the Registrant and each of its directors and officers.	S-1	03/21/2011	10.1			
10.2	Amended and Restated 2001 Stock Incentive Plan.†	S-1	01/14/2011	10.2			
10.3	2001 Stock Incentive Plan Notice of Option Grant and Option Agreement.†	10-Q	08/04/2017	10.1			
10.4	Form of Vesting Extension Agreement.†	8-K	02/03/2016	99.1			
10.5	Amended and Restated 2011 Equity Incentive Plan.	10-Q	08/10/2015	10.1			
10.6	2011 Equity Incentive Plan Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement (Performance Stock Units).†	10-Q	08/04/2017	10.2			
10.7	2011 Equity Incentive Plan Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement.†	10-Q	08/04/2017	10.3			
10.8	Letter agreement between the Registrant and David Hagan, dated April 11, 2011.†	S-1	04/13/2011	10.5			
10.9	2010 Management Incentive Compensation Plan.†	S-1	01/14/2011	10.7			
10.10	Office Lease Agreement, dated April 2007, between CA-10960 Wilshire Limited Partnership and Registrant.	S-1	01/14/2011	10.8			

E-1.21.24 N	Description	Inco	Filed		
Exhibit No. 10.11	Lease Amendment dated August 19, 2014 between CA-10960 Wilshire Limited Partnership and Registrant.	10-Q	Date 11/10/2014	Number 10.1	Herewith
10.12	License Agreement for Wireless Communications Access System, dated November 17, 2005, between City of Chicago and Chicago Concourse Development Group, LLC.^	S-1	04/29/2011	10.9	
10.13	Consent to Change in Ownership and Amendment of Agreement, dated June 22, 2006, between City of Chicago and Chicago Concourse Development Group, LLC.	S-1	2/25/2011	10.9A	
10.14	Amendment Agreement, dated December 31, 2014 between the Registrant and the City of Chicago.^	10-K	03/16/2015	10.11	
10.15	2018 Amendment to License Agreement for Wireless Communications Access System between City of Chicago and Chicago Concourse Development Group, LLC, dated as of March 31, 2018	10-Q/A	07/20/2018	10.1	
10.16	Telecommunications Network Access Agreement, dated August 26, 1999, between The Port Authority of New York and New Jersey and New York Telecom Partners, LLC.^	S-1	04/29/2011	10.10	
10.17	Supplemental Agreement, dated March 28, 2001 between The Port Authority of New York and New Jersey and New York Telecom Partners, LLC.^	S-1	04/29/2011	10.10A	
10.18	Supplemental Agreement, dated June 30, 2002 between the Port Authority of New York and New Jersey and New York Telecom Partners, LLC.^	10-Q	11/10/2014	10.2	
10.19	Supplemental Agreement, dated November 30, 2006 between the Port Authority of New York and New Jersey and New York Telecom Partners, LLC.^	10-Q	11/10/2014	10.3	
10.20	Letter, dated August 19, 2013, from New York Telecom Partners, LLC to The Port Authority of New York and New Jersey.#	10-Q	11/12/2013	10.17	
10.21	Supplemental Agreement, dated July 21, 2014 between the Port Authority of New York and New Jersey and New York Telecom Partners, LLC.^	10-Q	11/10/2014	10.4	
10.22	Management Incentive Compensation Plan.	S-1	03/21/2011	10.11	

		Inco	Filed		
Exhibit No. 10.23	Description  Letter agreement between the Registrant and Peter	Form 8-K	Date 04/02/2013	<u>Number</u> 10.1	Herewith
	Hovenier, dated April 1, 2013.†				
10.24	Letter agreement between the Registrant and Dawn Callahan, dated January 1, 2013.†	10-K	03/17/2014	10.15	
10.25	Letter agreement between the Registrant and Tom Tracey, dated September 23, 2011.†	10-K	03/17/2014	10.16	
10.26	Letter agreement between the Registrant and Derek Peterson, dated January 30, 2013.†	10-K	03/17/2014	10.17	
10.27	Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement (2016 Performance Stock Units) under 2011 Equity Incentive Plan.†	8-K	02/03/2016	99.2	
10.28	Cooperation Agreement, dated June 1, 2016, by and among Boingo Wireless, Inc., each of Ides Capital Management LP, Ides Capital Opportunities Fund, LP, Ides Capital Advisors LLC, Ides Capital Partners LP, Ides Capital GP LLC, Dianne McKeever, Robert Longnecker, and each of Legion Partners, L.P. I, Legion Partners, L.P. II, Legion Partners, LLC, Legion Partners Asset Management, LLC, Legion Partners Holdings, LLC, Christopher S. Kiper, Bradley S. Vizi and Raymond White.	8-K	06/01/2016	10.1	
10.29	Asset Purchase Agreement, dated August 1, 2018, by and among Boingo Wireless, Inc., Boingo MDU, LLC, Elauwit Networks, LLC, Daniel McDonough, Jr., Barry Rubens and Taylor Jones and, solely with respect to Article VII, Elauwit, LLC and DragonRider Enterprises, LLC.	8-K	08/02/2018	10.1	
10.30	Form of Base Capped Call Confirmation.	8-K	10/05/2018	99.1	
10.31	Form of Additional Capped Call Confirmation.	8-K	10/05/2018	99.2	
10.32	Credit Agreement between the Registrant and Bank of America, N.A.#				X
10.33	Letter agreement between the Registrant and Mike Finley, dated February 21, 2019.†				X
14.1	Code of Ethics and Business Conduct.	8-K	11/02/2017	14.1	
21.1	List of subsidiaries.				X
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.				X
24.1	Power of Attorney (included in Signature Page)				X

		Incorp	Filed		
Exhibit No.	Description	Form	Date	Number	Herewith
31.1	Certification of Chief Executive Officer pursuant to				X
	Section 302 of the Sarbanes-Oxley Act.				
31.2	Certification of Chief Financial Officer pursuant to				X
31.2	Section 302 of the Sarbanes-Oxley Act.				Λ
	Section 302 of the Sarbanes-Oxley Act.				
22.1					37
32.1	Certification of Chief Executive Officer pursuant to				X
	Section 906 of the Sarbanes-Oxley Act.*				
32.2					X
	Section 906 of the Sarbanes-Oxley Act.*				
101.INS	XBRL Instance Document				X
101.SCH	XBRL Taxonomy Extension Schema Document				X
101 CAI	XBRL Taxonomy Extension Calculation Linkbase				X
101.CAL	Document				Λ
	Document				
101 DEE	MDDI T				***
101.DEF	· · · · · · · · · · · · · · · · · · ·				X
	Document				
101.LAB	· · · · · · · · · · · · · · · · · · ·				X
	Document				
101.PRE	XBRL Taxonomy Extension Presentation Linkbase				X
	Document				

<sup>\*</sup> Furnished herewith.

# Item 16. Form 10-K Summary

Not applicable.

<sup>^</sup> Portions of this exhibit (indicated by asterisks) have been omitted pursuant to an order granting confidential treatment. These portions have been submitted separately to the Securities and Exchange Commission.

Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment. These portions have been submitted separately to the Securities and Exchange Commission.

<sup>†</sup> Indicates a management contract or compensatory plan.

# INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

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All schedules are omitted because they are not applicable, or the required information is shown in the Company's consolidated financial statements or the related notes thereto.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Boingo Wireless, Inc.

## Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Boingo Wireless, Inc. and its subsidiaries (the "Company") as of December 31, 2018 and 2017, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for each of the three years in the period ended December 31, 2018, including the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2018, based on criteria established in *Internal Control—Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2018 and 2017, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2018 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2018, based on criteria established in *Internal Control—Integrated Framework* (2013) issued by the COSO.

Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for revenue from contracts with customers in 2018.

## Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our

audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As described in Management's Report on Internal Control over Financial Reporting, management has excluded Boingo MDU, LLC from its assessment of internal control over financial reporting as of December 31, 2018 because it was acquired by the Company in a purchase business combination during 2018. We have also excluded Boingo MDU, LLC from our audit of internal control over financial reporting. Boingo MDU, LLC is a wholly-owned subsidiary whose total assets and total revenues excluded from management's assessment and our audit of internal control over financial reporting represent 5.3% and 4.5%, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2018.

## Definition and Limitations of Internal Control over Financial Reporting

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

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

/s/ PricewaterhouseCoopers LLP Los Angeles, California March 1, 2019

We have served as the Company's auditor since 2002, which includes periods before the Company became subject to SEC reporting requirements.

# **Consolidated Balance Sheets**

# (In thousands, except per share amounts)

	December 31,			
		2018		2017
Assets				
Current assets:				
Cash and cash equivalents	\$	149,412	\$	26,685
Accounts receivable, net		42,766		26,148
Prepaid expenses and other current assets		7,815		6,369
Total current assets		199,993		59,202
Property and equipment, net		314,179		262,359
Goodwill		59,640		42,403
Intangible assets, net		19,152		10,263
Other assets		9,936		10,082
Total assets	\$	602,900	\$	384,309
Liabilities and stockholders' equity		<del></del>		<del></del>
Current liabilities:				
Accounts payable	\$	21,543	\$	11,589
Accrued expenses and other liabilities		62,653		42,405
Deferred revenue		80,383		61,708
Current portion of long-term debt		_		875
Current portion of capital leases and notes payable		6,612		5,771
Total current liabilities		171,191		122,348
Deferred revenue, net of current portion		137,205		149,168
Long-term debt		151,670		_
Long-term portion of capital leases and notes payable		4,911		6,747
Deferred tax liabilities		1,073		1,004
Other liabilities		6,728		6,012
Total liabilities		472,778		285,279
Commitments and contingencies (Note 15)				
Stockholders' equity:				
Preferred stock, \$0.0001 par value; 5,000 shares authorized; no shares issued and outstanding		_		_
Common stock, \$0.0001 par value; 100,000 shares authorized; 42,669 and				
40,995 shares issued and outstanding for 2018 and 2017, respectively		4		4
Additional paid-in capital		259,132		230,679
Accumulated deficit		(129,930)		(131,967)
Accumulated other comprehensive loss		(1,295)		(898)
Total common stockholders' equity		127,911		97,818
Non-controlling interests		2,211		1,212
Total stockholders' equity		130,122		99,030
Total liabilities and stockholders' equity	\$	602,900	\$	384,309

# **Consolidated Statements of Operations**

# (In thousands, except per share amounts)

	Year Ended December 31,								
		2018		2017		2016			
Revenue	\$	250,821	\$	204,369	\$	159,344			
Costs and operating expenses:									
Network access		113,572		90,702		69,112			
Network operations		52,215		47,615		42,307			
Development and technology		31,372		26,754		22,126			
Selling and marketing		22,647		20,933		18,729			
General and administrative		30,302		35,568		29,719			
Amortization of intangible assets		3,710		3,498		3,448			
Total costs and operating expenses		253,818		225,070		185,441			
Loss from operations		(2,997)		(20,701)		(26,097)			
Interest and other expense, net		(1,887)		(153)		(459)			
Loss before income taxes		(4,884)		(20,854)		(26,556)			
Income tax (benefit) expense		(5,153)		(2,078)		427			
Net income (loss)		269		(18,776)		(26,983)			
Net income attributable to non-controlling interests		1,489		590		348			
Net loss attributable to common stockholders	\$	(1,220)	\$	(19,366)	\$	(27,331)			
Net loss per share attributable to common stockholders:									
Basic	\$	(0.03)	\$	(0.49)	\$	(0.72)			
Diluted	\$	(0.03)	\$	(0.49)	\$	(0.72)			
Weighted average shares used in computing net loss per share attributable to common stockholders:									
Basic		42,066		39,824		38,025			
Diluted		42,066		39,824		38,025			

# Consolidated Statements of Comprehensive Income (Loss)

# (In thousands)

	Year Ended December 31,						
		2018	2017			2016	
Net income (loss)	\$	269	\$	(18,776)	\$	(26,983)	
Other comprehensive (loss) income, net of tax:							
Foreign currency translation adjustments		(342)		(19)		211	
Comprehensive loss		(73)		(18,795)		(26,772)	
Comprehensive income attributable to non-controlling interest		1,544		599		269	
Comprehensive loss attributable to common stockholders	\$	(1,617)	\$	(19,394)	\$	(27,041)	

# Consolidated Statements of Stockholders' Equity

# $(In\ thousands)$

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Non- controlling Interest	Total Stockholder's Equity
Balance at December 31 2015							
Issuance of common stock under stock incentive	37,325	\$ 4	\$ 197,612	\$ (85,176)	\$ (1,160)	\$ 733	\$ 112,035
plans Shares	1,237	<u> </u>	2,984	_	_	<u> </u>	2,984
withheld for taxes Stock-based	_	_	(2,827)	_	_	_	(2,827)
compensation expense	_	_	13,412	_	_	_	13,412
controlling interest distributions	_	_	_	_	_	(286)	(286)
Cumulative effect of a change in accounting				<b>60</b> 0		(===)	(===)
principle Net loss	_		94	(94) (27,331)		348	(26,983)
Other comprehensi				(27,331) —	290	(79)	211
Balance at December 31 2016	38,562	4	211,275	(112,601)	(870)	738	98,546
Issuance of common stock under stock incentive		7		(112,001)	(670)	730	
plans Shares withheld for	2,433	_	9,244	_	_	_	9,244
taxes Stock-based compensatio	_	_	(4,872)	_	_	_	(4,872)
expense Non- controlling interest distributions	_	_	15,032	_	<u> </u>	(125)	15,032
Net loss	_		_	(19,366)	_	590	(18,776)
Other comprehensi income	_	_	_		(28)	9	(19)
Balance at December 31 2017	40,995	4	230,679	(131,967)	(898)	1,212	99,030
Issuance of common stock under stock	, , , , ,	7	200,017	(101,701)	(370)	1,212	27,020

incentive plans	1,674	_	9,979	_	_	_	9,979
Shares	1,071		2,212				7,717
withheld for			(10.526)				(10.526)
taxes Stock-based	<del></del>	_	(10,536)		_	<del></del>	(10,536)
compensatio							
expense	_	_	13,057	_	_	_	13,057
Equity component of Convertible Notes, net of offering costs and							
tax	_	_	39,922	_	_	_	39,922
Payment for capped call share			(0.000)				
options	_	_	(23,969)	_	_	_	(23,969)
Non- controlling interest distributions	_	_	_	_	_	(614)	(614)
Cumulative effect of a change in accounting							
principle	_	_	_	3,257	_	69	3,326
Net income Other comprehensi	_	_	_	(1,220)	_	1,489	269
loss					(397)	55	(342)
Balance at December 31 2018	42,669	<u>\$</u> 4	\$ 259,132	<u>(129,930)</u>	<u>\$ (1,295)</u>	\$ 2,211	<u>\$ 130,122</u>

# **Consolidated Statements of Cash Flows**

# (In thousands)

		Year Ended December 31,			1,	
	Ξ	2018		2017		2016
Cash flows from operating activities						
Net income (loss)	\$	269	\$	(18,776)	\$	(26,983)
Adjustments to reconcile net loss including non-controlling interests to						
net cash provided by operating activities:						
Depreciation and amortization of property and equipment		78,837		69,097		49,202
Amortization of intangible assets		3,710		3,498		3,448
Bad debt expense		363		773		116
Impairment loss and loss on disposal of fixed assets, net		238		1,158		66
Stock-based compensation		12,268		14,215		12,805
Amortization of deferred financing costs and debt discount, net of						
amounts capitalized		2,261		86		182
Change in deferred income taxes		(5,617)		(2,575)		303
Changes in operating assets and liabilities, net of effect of						
acquisition:						
Accounts receivable		(13,702)		16,046		526
Prepaid expenses and other assets		(800)		(841)		(835)
Accounts payable		(246)		(1,554)		(465)
Accrued expenses and other liabilities		6,477		9,313		5,835
Deferred revenue		9,263		7,288		71,005
Net cash provided by operating activities		93,321		97,728		115,205
Cash flows from investing activities						
Purchases of property and equipment		(108,730)		(73,308)	(	107,271)
Payments for asset and business acquisitions		(24,624)		(1,150)		(60)
Net cash used in investing activities		(133,354)		(74,458)	(	[107,331)
Cash flows from financing activities						
Proceeds from Convertible Notes offering, net of issuance costs		195,716		_		_
Payment for capped call options		(23,969)		_		_
Proceeds from credit facility		15,000		_		5,000
Principal payments on credit facility		(15,875)		(16,094)		(5,656)
Proceeds from exercise of stock options		9,979		9,244		2,984
Payments of capital leases and notes payable		(6,181)		(4,207)		(2,212)
Payments of withholding tax on net issuance of restricted stock units		(10,536)		(4,872)		(2,827)
Debt issuance costs		(695)				(124)
Payments to non-controlling interest		(614)		(125)		(286)
Net cash provided by (used in) financing activities		162,825		(16,054)		(3,121)
Effect of exchange rates on cash.		(65)		(16)		14
Net increase in cash and cash equivalents	_	122,727	_	7,200	_	4,767
Cash and cash equivalents at beginning of year		26,685		19,485		14,718
Cash and cash equivalents at end of year	\$	149,412	\$	26,685	\$	19,485
	Ψ	147,412	Ψ	20,003	Ψ_	17,403
Supplemental disclosure of cash flow information	Ф		Ф	220	Φ	
Cash paid for interest, net of amounts capitalized	\$		\$	239	\$	1.60
Cash paid for taxes, net of refunds	\$	565	\$	304	\$	163
Supplemental disclosure of non-cash investing and financing activities						
Property and equipment costs included in accounts payable, accrued	ф	27.27.	Ф	20.554	Φ	16076
expenses and other liabilities	\$	37,275	\$	20,554	\$	16,976
Purchase of equipment and prepaid maintenance services under capital		<b>.</b> 0 . 0	_			
financing arrangements	\$	5,068	\$	7,944	\$	6,629
Capitalized stock-based compensation included in property and	_		_			
equipment costs	\$	789	\$	696	\$	727
Purchase price for asset and business acquisitions included in accrued	<u></u>	40.0	<u></u>		<u>_</u>	4.450
expenses and other liabilities	\$	4,913	\$		\$	1,150
Debt issuance costs included in accrued expenses and other liabilities	\$	164	\$	_	\$	_
Tax effect on equity component of Convertible Notes	\$	5,686	\$	_	\$	_

#### Notes to the Consolidated Financial Statements

(In thousands, except shares and per share amounts)

#### 1. The business

Boingo Wireless, Inc. and its subsidiaries (collectively "we, "us", "our" or "the Company") is a leading global provider of wireless connectivity solutions for smartphones, tablets, laptops, wearables and other wireless-enabled consumer devices. Boingo Wireless, Inc. was incorporated in April 16, 2001 in the State of Delaware. We have a diverse monetization model that enables us to generate revenues from wholesale partnerships, retail sales, and advertising across these wireless networks. Wholesale offerings include distributed antenna systems ("DAS") or small cells, which are cellular extension networks, multifamily, carrier offload, Wi-Fi roaming, value-added services, private label Wi-Fi, and location-based services. Retail products include Wi-Fi services for military personnel living in the barracks of U.S. Army, Air Force and Marines bases around the world, and Wi-Fi subscriptions and day passes that provide access to over 1.2 million commercial hotspots worldwide. Advertising revenue is driven by Wi-Fi sponsorships at airports, hotels, cafes and restaurants, and public spaces. Our customers include some of the world's largest carriers, telecommunications service providers, global consumer brands, and property owners, as well as troops stationed at military bases and Internet savvy consumers on the go.

## 2. Summary of significant accounting policies

## Basis of presentation and consolidation

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP").

The accompanying consolidated financial statements include our accounts and the accounts of our majority owned subsidiaries. We consolidate our 70% ownership of Chicago Concourse Development Group, LLC and our 75% ownership of Boingo Holding Participacoes Ltda. in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, Consolidation. Other parties' interests in consolidated entities are reported as non-controlling interests. All intercompany balances and transactions have been eliminated in consolidation.

In May 2014, the FASB issued Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers*, which replaced the accounting standards for revenue recognition under FASB ASC 605, *Revenue Recognition*, with a single comprehensive five-step model, eliminating industry-specific accounting rules. The core principle is to recognize revenue upon the transfer of control of goods or services to a customer at an amount that reflects the consideration expected to be received. The FASB amended several aspects of the guidance after the issuance of ASU 2014-09, and the new revenue recognition accounting standard, as amended, was codified within ASC 606, *Revenue from Contracts with Customers*. On January 1, 2018, we adopted ASC 606 using the modified retrospective method applied to those contracts which were not completed as of January 1, 2018. Results for reporting periods beginning on January 1, 2018 are presented under ASC 606, while prior period amounts are not adjusted and continue to be reported in accordance with ASC 605.

Adoption of ASC 606 using the modified retrospective method required us to record a cumulative effect adjustment, net of tax, to accumulated deficit and non-controlling interests of \$3,257 and \$69,

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

respectively, on January 1, 2018. In addition, adoption of the standard resulted in the following changes to the consolidated balance sheet as of January 1, 2018:

	January 1, 2018 (Per ASC 605)		ljustment Adoption	January 1, 2018 (Per ASC 606)		
Accounts receivable, net	\$	26,148	\$ (1,069)	\$	25,079	
Prepaid expenses and other current						
assets	\$	6,369	\$ 170	\$	6,539	
Other assets	\$	10,082	\$ (2,179)	\$	7,903	
Deferred revenue, current	\$	61,708	\$ 14,176	\$	75,884	
Deferred revenue, net of current						
portion	\$	149,168	\$ (20,580)	\$	128,588	

The below table summarizes the changes to our consolidated balance sheet as of December 31, 2018 as a result of the adoption of ASC 606:

	ember 31, 2018 Per ASC 605)		Adjustment for Adoption		Pecember 31, 2018 (Per ASC 606)
		(in	thousands)		
Accounts receivable, net	\$ 43,410	\$	(644)	\$	42,766
Prepaid expenses and other					
current assets	\$ 7,603	\$	212	\$	7,815
Other assets	\$ 12,224	\$	(2,288)	\$	9,936
Deferred revenue, current	\$ 82,731	\$	(2,348)	\$	80,383
Deferred revenue, net of current					
portion	\$ 147,785	\$	(10,580)	\$	137,205
Non-controlling interests	\$ 408	\$	1,803	\$	2,211

The below table summarizes the changes to our consolidated statement of operations for the year ended December 31, 2018 as a result of the adoption of ASC 606 with income taxes calculated excluding the tax effect on the equity component of the Convertible Notes:

	Year Ended December 31, 2018 (Per ASC 605)		Adjustment for Adoption (in thousands)		Dec	Year Ended ember 31, 2018 Per ASC 606)
Revenue	\$	244,307	(In t	6,514	\$	250,821
Income tax benefit	\$	(4,785)	\$	(368)	\$	(5,153)
Non-controlling interests	\$	(245)	\$	1.734	\$	1.489

The changes to the consolidated balance sheets as of January 1, 2018 and December 31, 2018 and the consolidated statement of operations for the year ended December 31, 2018 were primarily due to the following factors: (i) reclassification of unbilled receivables (contract assets) to a contra-liability account under ASC 606; and (ii) recognition of revenue related to our single performance obligation for our DAS contracts monthly over the contract term once the customer has the ability to access the DAS network and we commence maintenance on the DAS network under ASC 606 as compared to recognition of build-out fees for our DAS contracts monthly over the term of the estimated customer relationship period once the build-out is complete and minimum monthly access fees for our DAS contracts monthly over the term of the telecom operator agreement under ASC 605. The changes to

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

the consolidated balance sheet as of January 1, 2018 are reflected as non-cash changes within cash provided by operating activities in our consolidated statement of cash flows for the year ended December 31, 2018.

In May 2017, the FASB issued ASU 2017-09, Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting, which provides guidance on the types of changes to the terms or conditions of share-based payment awards to which an entity applies modification accounting under ASC 718. According to the new standard, an entity would not apply modification accounting if the fair value, vesting conditions and classification of the modified award is the same as the original award immediately before the original award is modified. The standard will be applied prospectively to modifications that occur on or after the adoption date. We adopted ASU 2017-09 on January 1, 2018 and the adoption of this standard did not have a material impact on our consolidated financial statements.

In January 2017, the FASB issued Accounting Standards Update ("ASU") 2017-04, *Intangibles—Goodwill and Other (Topic 350)*, which simplifies how an entity is required to test goodwill for impairment. An entity will no longer perform a hypothetical purchase price allocation to measure goodwill impairment. Instead, impairment will be measured using the difference between the carrying amount and the fair value of the reporting unit. The standard is effective for interim and annual periods beginning after December 15, 2019 with early adoption permitted for goodwill impairment tests with measurement dates after January 1, 2017. We elected to early adopt ASU 2017-04 as of January 1, 2017 and the adoption of this standard did not have a material impact on our consolidated financial statements.

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*, which requires that a statement of cash flows explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. Therefore, amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. We adopted ASU 2016-18 on January 1, 2018 under the retrospective transition method for each period presented in our consolidated statements of cash flows.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230)*, which adds or clarifies guidance to reduce diversity in how certain transactions are classified in the statement of cash flows. The standard is effective for interim and annual periods beginning after December 15, 2017 with early adoption permitted. The standard requires application using a retrospective transition method. We elected to early adopt ASU 2016-15 as of January 1, 2017 and the adoption of this standard did not have a material impact on our consolidated financial statements.

### Use of estimates

The preparation of accompanying consolidated financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the dates of the accompanying consolidated financial statements, and the reported amounts of revenue and expenses during the reporting period.

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

Actual results could differ from those estimates. Assets and liabilities which are subject to significant judgment and the use of estimates include the allowance for doubtful accounts, recoverability of goodwill and long-lived assets, valuation allowances with respect to deferred tax assets, uncertain tax positions, useful lives associated with property and equipment, valuation and useful lives of intangible assets, valuation of contingent consideration, contract assets and contract liabilities including estimates of variable consideration, and the valuation and assumptions underlying stock-based compensation and other equity instruments. On an ongoing basis, we evaluate our estimates compared to historical experience and trends, which form the basis for making judgments about the carrying value of assets and liabilities.

## Concentrations of credit risk

Financial instruments that potentially subject us to significant concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. We extend credit based upon the evaluation of the customer's financial condition and generally collateral is not required. We maintain an allowance for doubtful accounts based upon expected collectability of accounts receivable. We primarily estimate our allowance for doubtful accounts based on a specific review of significant outstanding accounts receivable. For the year ended December 31, 2018, three customers accounted for 37% of total revenue. For the year ended December 31, 2017, four customers accounted for 44% of total revenue. For the year ended December 31, 2016, two customers accounted for 23% of total revenue. At December 31, 2018, four customers accounted for 20%, 19%, 17% and 13% of the total accounts receivable, respectively. At December 31, 2017, three customers accounted for 19%, 17% and 13% of the total accounts receivable, respectively.

## Cash and cash equivalents

Cash and cash equivalents include highly liquid investments that are readily convertible into known amounts of cash with original maturities of three months or less when acquired. At December 31, 2018 and 2017, cash equivalents consisted of money market funds.

#### Fair value of financial instruments

Fair value is defined as the price that would be received from selling an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be recorded at fair value, we consider the principal or most advantageous market in which it would transact, and we consider assumptions that market participants would use when pricing the asset or liability.

The accounting guidance for fair value measurement also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard establishes a fair value hierarchy based on the level of independent, objective evidence surrounding the inputs used to measure fair value. A financial instrument's categorization within the

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The fair value hierarchy is as follows:

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.
- Level 2—Quoted prices for identical assets and liabilities in markets that are not active, quoted prices for similar assets and liabilities in active markets or financial instruments for which significant inputs are observable, either directly or indirectly.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The carrying amount reflected in the accompanying consolidated balance sheets for cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, other assets, accounts payable, accrued expenses and other liabilities, and deferred revenue approximates fair value due to the short duration and nature of these financial instruments.

## Property and equipment

Property and equipment are generally stated at historical cost, less accumulated depreciation and amortization. Our cost basis includes property and equipment acquired in business combinations that were initially recorded at fair value as of the date of acquisition. Maintenance and repairs are charged to expense as incurred and the cost of additions and betterments that increase the useful lives of the assets are capitalized. Depreciation and amortization is computed over the estimated useful lives of the related asset type using the straight-line method.

The estimated useful lives for property and equipment are as follows:

Software	2 to 5 years
Computer equipment	3 to 5 years
Furniture, fixtures and office	
equipment	3 to 5 years
Leasehold improvements	The shorter of the estimated useful
	life or the remaining term of the
	agreements, generally ranging from
	2 to 18 years

Leasehold improvements are principally comprised of network equipment located at various managed and operated locations, primarily airports, under exclusive, long-term, non-cancelable contracts to provide wireless communication network access. We capitalize certain costs for our network equipment during the pre-construction period, which is the period during which costs are incurred to evaluate the site and continue to capitalize costs until the network equipment is substantially completed and ready for use. Cost for network equipment includes capitalized interest.

## Equipment and software under capital lease

We lease certain data communications equipment, other equipment and software under capital lease agreements. The assets and liabilities under capital lease are recorded at the lesser of the present value of aggregate future minimum lease payments, including estimated bargain purchase options, or

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

the fair value of the asset under lease. Assets under capital lease are depreciated using the straight-line method over the estimated useful lives of the assets or the term of the lease agreements.

#### Software development costs

We capitalize costs associated with software developed or obtained for internal use when the preliminary project stage is completed, and it is determined that the software will provide significantly enhanced capabilities and modifications. These capitalized costs are included in property and equipment and include external direct cost of services procured in developing or obtaining internal-use software and personnel and related expenses for employees who are directly associated with, and who devote time to internal-use software projects. Capitalization of these costs ceases once the project is substantially complete and the software is ready for its intended use. Once the software is ready for its intended use, the costs are amortized over the useful life of the software. Post-configuration training and maintenance costs are expensed as incurred.

### Long-lived assets

Intangible assets consist of acquired venue contracts, technology, advertiser relationships, non-compete agreements and patents and trademarks. We record intangible assets at fair value as of the date of acquisition and amortize these finite-lived assets over the shorter of the contractual life or the estimated useful life on a straight-line basis. We estimate the useful lives of acquired intangible assets based on factors that include the planned use of each acquired intangible asset, the expected pattern of future cash flows to be derived from each acquired intangible asset and contractual periods specified in the related agreements. We include amortization of acquired intangibles in amortization of intangible assets in the accompanying consolidated statements of operations.

We perform an impairment review of long-lived assets held and used whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors we consider important that could trigger an impairment review include but are not limited to: significant underperformance relative to projected future operating results, significant changes in the manner of our use of the acquired assets or our overall business and product strategies and significant industry or economic trends. When we determine that the carrying value of a long-lived asset may not be recoverable based upon the existence of one or more of these indicators, we determine the recoverability by comparing the carrying amount of the asset to net future undiscounted cash flows that the asset is expected to generate or other indices of fair value. We would then recognize an impairment charge equal to the amount by which the carrying amount exceeds the fair market value of the asset.

## Goodwill

Goodwill represents the excess of the purchase price over the fair value of net assets acquired in connection with the acquisition of Concourse Communication Group, LLC in June 2006, Cloud 9 Wireless, Inc. in August 2012, Endeka Group, Inc. in February 2013, Electronic Media Systems, Inc. and Advanced Wireless Group, LLC in October 2013, and Elauwit Networks, LLC in August 2018.

We test goodwill for impairment in accordance with guidance provided by FASB ASC 350, *Intangibles—Goodwill and Other*. Goodwill is tested for impairment at least annually at the reporting

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

unit level or whenever events or changes in circumstances indicate that goodwill might be impaired. Events or changes in circumstances which could trigger an impairment review include a significant adverse change in legal factors or in the business climate, an adverse action or assessment by a regulator, unanticipated competition, a loss of key personnel, significant changes in the manner of our use of the acquired assets or the strategy for our overall business, significant negative industry or economic trends, or significant underperformance relative to expected historical or projected future results of operations. We perform our impairment test annually as of December 31<sup>st</sup>.

Entities have the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the goodwill impairment test described in FASB ASC 350. If, after assessing qualitative factors, an entity determines it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then performing the impairment test is unnecessary. The impairment loss, if any, is measured by comparing the implied fair value of the reporting unit goodwill with the carrying amount of goodwill.

Currently, we have one reporting unit, one operating segment and one reportable segment. At December 31, 2018 and 2017, all of the goodwill was attributed to our reporting unit. We tested our goodwill for impairment using a market- based approach and no impairment was identified as the fair value of our reporting unit was substantially in excess of its carrying amount. To date, we have not recorded any goodwill impairment charges.

#### Convertible debt transactions

We separately account for the liability and equity components of convertible debt instruments that can be settled in cash by allocating the proceeds from issuance between the liability component and the embedded conversion option in accordance with accounting for convertible debt instruments that may be settled in cash (including partial cash settlement) upon conversion. The value of the equity component is calculated by first measuring the fair value of the liability component, using the interest rate of a similar liability that does not have a conversion feature, as of the issuance date. The difference between the proceeds from the convertible debt issuance and the amount measured as the liability component is recorded as the equity component with a corresponding discount recorded on the debt. We recognize amortization of the resulting discount using the effective interest method as interest expense on our consolidated statements of operations. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. We have allocated issuance costs incurred to the liability and equity components. Issuance costs attributable to the liability component are being amortized to expense over the respective term of the Convertible Notes, and issuance costs attributable to the equity components were netted with the respective equity component in additional paid-in capital. Simultaneously, we bought capped call options from a financial institution to minimize the impact of potential dilution of our common stock upon conversion. The premium for the capped call options was recorded as additional paid-in capital on our consolidated balance sheets as the options are settleable in our common stock.

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

#### Revenue recognition

We generate revenue from several sources including: (i) DAS customers that are telecom operators under long-term contracts for access to our DAS at our managed and operated locations, (ii) military and retail customers under subscription plans for month-to-month network access that automatically renew, and military and retail single-use access from sales of hourly, daily or other single-use access plans, (iii) arrangements with property owners for multifamily properties that provide for network installation and monthly Wi-Fi services and support to the residents and employees, (iv) arrangements with wholesale Wi-Fi customers that provide software licensing, network access, and/or professional services fees, and (v) display advertisements and sponsorships on our walled garden sign-in pages. Software licensed by our wholesale platform services customers can only be used during the term of the service arrangements and has no utility to them upon termination of the service arrangement.

#### Post-ASC 606 adoption

Revenues are recognized when a contract with a customer exists and control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services and the identified performance obligation has been satisfied. Contracts entered into at or near the same time with the same customer are combined and accounted for as a single contract if the contracts have a single commercial objective, the amount of consideration is dependent on the price or performance of the other contract, or the services promised in the contracts are a single performance obligation. Contract amendments are routine in the performance of our DAS, wholesale Wi-Fi, and advertising contracts. Contracts are often amended to account for changes in contract specifications or requirements to expand network access services. In most instances, our DAS and wholesale Wi-Fi contract amendments are for additional goods or services that are distinct, and the contract price increases by an amount that reflects the standalone selling price of the additional goods or services; therefore, such contract amendments are accounted for as separate contracts. Contract amendments for our advertising contracts are also generally for additional goods or services that are distinct; however, the contract price does not increase by an amount that reflects the standalone selling price of the additional goods or services. Advertising contract amendments are therefore generally accounted for as contract modifications under the prospective method. Contract amendments to transaction prices with no change in remaining services are accounted for as contract modifications under the cumulative catch-up method.

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account in ASC 606. A contract's transaction price is allocated to each distinct performance obligation and is recognized as revenue when, or as, the performance obligation is satisfied, which typically occurs when the services are rendered. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. Our contracts with customers may include multiple performance obligations. For such arrangements, we allocate revenue to each performance obligation based on its relative standalone selling price. We generally determine standalone selling prices based on the prices charged to customers. Judgment may be used to determine the standalone selling prices for items that are not sold separately, including services provided at no additional charge. Most of our performance obligations are satisfied over time as services are provided. We generally recognize

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

revenue on a gross basis as we are primarily responsible for fulfilling the promises to provide the specified goods or services, we are responsible for paying all costs related to the goods or services before they have been transferred to the customer, and we have discretion in establishing prices for the specified goods or services. Revenue is presented net of any sales and value added taxes.

Payment terms vary on a contract-by-contract basis, although terms generally include a requirement of payment within 30 to 60 days for non-recurring payments, the first day of the monthly or quarterly billing cycle for recurring payments for DAS and wholesale Wi-Fi contracts, and the first day of the month prior to the month that services are provided for multifamily contracts. We apply a practical expedient for purposes of determining whether a significant financing component may exist for our contracts if, at contract inception, we expect that the period between when we transfer the promised good or service to the customer and when the customer pays for that good or service will be one year or less. In instances where the customer pays for a good or service one year or more in advance of the period when we transfer the promised good or service to the customer, we have determined our contracts generally do not include a significant financing component. The primary purpose of our invoicing terms is not to receive financing from our customers or to provide customers with financing but rather to maximize our profitability on the customer contract. Specifically, inclusion of non-refundable upfront fees in our long-term customer contracts increases the likelihood that the customer will be committed through the end of the contractual term and ensures recoverability of the capital outlay that we incur in expectation of the customer fulfilling its contractual obligations. We may also provide service credits to our customers if we fail to meet contractual monthly system uptime requirements and we account for the variable consideration related to these service credits using the most likely amount method.

For contracts that include variable consideration, we estimate the amount of consideration at contract inception under the expected value method or the most likely amount method and include the amount of variable consideration that is not considered to be constrained. Significant judgment is used in constraining estimates of variable consideration. We update our estimates at the end of each reporting period as additional information becomes available.

Timing of revenue recognition may differ from the timing of invoicing to customers. We record unbilled receivables (contract assets) when revenue is recognized prior to invoicing, deferred revenue (contract liabilities) when revenue is recognized after invoicing, and receivables when we have an unconditional right to consideration to invoice and receive payment in the future. We present our DAS, multifamily, and wholesale Wi-Fi contracts in our consolidated balance sheet as either a contract asset or a contract liability with any unconditional rights to consideration presented separately as a receivable. Our other customer contracts generally do not have any significant contract asset or contract liability balances. Generally, a significant portion of the billing for our DAS contracts occurs prior to revenue recognition, resulting in our DAS contracts being presented as contract liabilities. In contrast, our wholesale Wi-Fi contracts that contain recurring fees with annual escalations are generally presented as contract assets as revenue is recognized prior to invoicing. Our multifamily contracts can be presented as either contract liabilities or contract assets primarily as a result of timing of invoicing for the network installations.

We recognize an asset for the incremental costs of obtaining a contract with a customer if we expect the benefit of those costs to be longer than one year. We have determined that certain sales

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

incentive programs meet the requirements to be capitalized. Total capitalized costs to obtain a contract were immaterial during the year ended December 31, 2018 and are included in prepaid expenses and other current assets and non-current other assets on our consolidated balance sheets. We apply a practical expedient to expense costs as incurred for costs to obtain a contract with a customer when the amortization period would have been one year or less, the most significant of which relates to sales commissions related to obtaining our advertising customer contracts. Contract costs are evaluated for impairment in accordance with ASC 310, *Receivables*.

#### DAS

We enter into long-term contracts with telecom operators at our managed and operated locations. The initial term of our contracts with telecom operators generally range from five to twenty years and the agreements generally contain renewal options. Some of our contracts provide termination for convenience clauses that may or may not include substantive termination penalties. We apply judgment in determining the contract term, the period during which we have present and enforceable rights and obligations. Our DAS customer contracts generally contain a single performance obligation provide non-exclusive access to our DAS or small cell networks to provide telecom operators' customers with access to the licensed wireless spectrum, together with providing telecom operators with construction, installation, optimization/engineering, maintenance services and agreed-upon storage space for the telecom operators' transmission equipment, each related to providing such licensed wireless spectrum to the telecom operators. The performance obligation is considered a series of distinct services as the performance obligation is satisfied over time and the same time-based input method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer. Our contract fee structure generally includes a non-refundable upfront fee and we evaluated whether customer options to renew services give rise to a material right that should be accounted for as a separate performance obligation because of those non-refundable upfront fees. We believe that a material right generally does not exist for our DAS customer contracts that contain renewal options because the telecom operators' decision to renew is highly dependent upon our ability to maintain our exclusivity as the DAS service provider at the venue location and our limited operating history with venue and customer renewals. The telecom operators will make the decision to incur the capital improvement costs at the venue location irrespective of our remaining exclusivity period with the venue as the telecom operators expect that the assets will continue to be serviced regardless of whether we will remain such exclusive DAS service provider. Our contracts also provide our DAS customers with the option to purchase additional future services such as upgrades or enhancements. This option is not considered to provide the customer with a material right that should be accounted for as a separate performance obligation since the cost of the additional future services depends entirely on the market rate of such services at the time such services are requested and we are not automatically obligated to stand ready to deliver these additional goods or services as the customer may reject our proposal. Periodically, we install and sell DAS networks to customers where we do not have service contracts or remaining obligations beyond the installation of those networks and we recognize build-out fees for such projects as revenue when the installation work is completed, and the network has been accepted by the

Our contract fee structure may include varying components of an upfront build-out fee and recurring access, maintenance, and other fees. The upfront build-out fee is generally structured as a

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

firm-fixed price or cost-plus arrangement and becomes payable as certain contract and/or construction milestones are achieved. Our DAS and small cell networks are neutral-host networks that can accommodate multiple telecom operators. Some of our DAS customer contracts provide for credits that may be issued to existing telecom operators for additional telecom operators subsequently joining the DAS network. The credits are generally based upon a fixed dollar amount per additional telecom operator, a fixed percentage amount of the original build-out fee paid by the telecom operator per additional telecom operator, or a proportionate share based upon the split among the relevant number of telecom operators for the actual costs incurred by all telecom operators to construct the DAS network. In most cases, there is significant uncertainty on whether additional telecom operator contracts will be executed at inception of the contract with the existing telecom operator. We believe that the upfront build-out fee is fixed consideration once the build-out is complete and any subsequent credits that may be issued would be accounted for in a manner similar to a contract modification under the prospective method because (i) the execution of customer contracts with additional telecom carriers is at our sole election and (ii) we would not execute agreements with additional telecom carriers if it would not increase our revenues and gross profits at the venue level. Further, the credits issued to the existing telecom operator changes the transaction price on a go-forward basis, which corresponds with the decline in service levels for the existing telecom operator once the neutral-host DAS network can be accessed by the additional telecom operator. The recurring access, maintenance, and other fees generally escalate on an annual basis. The recurring fees are variable consideration until the contract term and annual escalation dates are fixed. We estimate the variable consideration for our recurring fees using the most likely amount method based on the expected commencement date for the services. We evaluate our estimates of variable consideration each period and record a cumulative catch-up adjustment in the period in which changes occur for the amount allocated to satisfied performance obligations.

We generally recognize revenue related to our single performance obligation for our DAS customer contract monthly over the contract term once the customer has the ability to access the DAS network and we commence maintenance on the DAS network.

## Military and retail

Military and retail customers must review and agree to abide by our standard "Customer Agreement (With Acceptable Use Policy) and End User License Agreement" before they are able to sign-up for our subscription or single-use Wi-Fi network access services. Our military and retail customer contracts generally contain a single performance obligation—provide non-exclusive access to Wi-Fi services, together with performance of standard maintenance, customer support, and the Wi-Finder app to facilitate seamless connection to the Company's Wi-Fi network. The performance obligation is considered a series of distinct services as the performance obligation is satisfied over time and the same time-based input method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer. Our contracts also provide our military and retail subscription customers with the option to renew the agreement when the subscription term is over. We do not consider this option to provide the customer with a material right that should be accounted for as a separate performance obligation because the customer would not receive a discount if it decided to renew and the option to renew is cancellable within 5 days' notice prior to the end of the then current term by either party.

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

The contract transaction price is determined based on the subscription or single-use plan selected by the customer. Our military and retail service plans are for fixed price services as described on our website. From time to time, we offer promotional discounts that result in an immediate reduction in the price paid by the customer. Subscription fees from military and retail customers are paid monthly in advance. We provide refunds for our military and retail services on a case-by-case basis. Refunds and credit card chargeback amounts are not significant and are recorded as contra-revenue in the period the refunds are made, or chargebacks are received.

Subscription fee revenue is recognized ratably over the subscription period. Revenue generated from military and retail single-use access is recognized when access is provided, and the performance obligation is satisfied.

#### Multifamily

We enter into long-term contracts with property owners. The initial term of our contracts with property owners generally range from three to five years and the contracts may contain renewal options. Some of our contracts provide termination for convenience clauses that may or may not include substantive termination penalties. We apply judgment in determining the contract term, which is the period during which we have present and enforceable rights and obligations. Our customer contracts generally contain two performance obligations: (i) install the network required to provide Wi-Fi services; and (ii) provide Wi-Fi services and technical support to the residents and employees. Our contracts may also provide our property owners with the option to renew the agreement. We do not consider this option to provide the property owner with a material right that should be accounted for as a separate performance obligation because the property owner would not receive a discount if it decided to renew and the option to renew is generally cancellable by either party subject to the notice of non-renewal requirements specified in the contract. Our contracts may also provide our customers with the option to purchase additional future services. We do not consider this option to provide the customer with a material right that should be accounted for as a separate performance obligation since the cost of the additional future services are generally at market rates for such services and we are not automatically obligated to stand ready to deliver these additional goods or services because the customer may reject our proposal.

Our contract fee structure includes a network installation fee and recurring Wi-Fi service and support fees. The network installation fee is generally structured as a firm-fixed price arrangement and becomes payable as certain contract and/or installation milestones are achieved. We generally estimate variable consideration for unpriced change orders using the most likely amount method based on the expected price for those services. If network installations are not completed by specified dates, we may be subject to network installation penalties. We estimate the variable consideration for our network installation fees using the most likely amount method based on the amount of network installation penalties we expect to incur. Title to the network generally transfers to the property owner once installation is completed and the network has been accepted. We generally recognize revenue related to our network installation performance obligation using a cost-to-cost method over the network installation period. We may provide latent defect warranties for materials and installation labor services related to our network installation services. Our warranty obligations are generally not accounted for as

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

separate performance obligations as warranties cannot be separately purchased and warranties do not provide a service in addition to the assurance that the network will function as expected.

The recurring fees commence once the network is launched with recurring fees generally based upon a fixed or variable occupancy rate. The recurring Wi-Fi service fees may be adjusted prospectively for changes in circuit and/or video content costs, and Wi-Fi support fees may escalate on an annual basis. We estimate the variable consideration for our recurring fees using the expected value method with the exception of the variable consideration related to actual occupancy rates, which we record when we have the contractual right to bill. We evaluate our estimates of variable consideration each period and record a cumulative catch-up adjustment in the period in which changes occur for the amount allocated to satisfied performance obligations. We recognize revenue related to the recurring fees on a monthly basis over the contract term as the Wi-Fi services and support is rendered, and the performance obligation is satisfied.

### Wholesale Wi-Fi

We enter into long-term contracts with enterprise customers such as telecom operators, cable companies, technology companies, and enterprise software/services companies, that pay us usage-based Wi-Fi network access and software licensing fees to allow their customers' access to our footprint worldwide. We also enter into long-term contracts with financial institutions and other enterprise customers who provide access to our Wi-Fi footprint as a value-added service for their customers. The initial term of our contracts with wholesale Wi-Fi customers generally range from one to three years and the agreements generally contain renewal options. Some of our contracts provide termination for convenience clauses that may or may not include substantive termination penalties. We apply judgment in determining the contract term, the period during which we have present and enforceable rights and obligations. Our wholesale Wi-Fi customer contracts generally contain a single performance obligation—provide non-exclusive rights to access our Wi-Fi networks to provide wholesale Wi-Fi customers' end customers with access to the high-speed broadband network that may be bundled together with integration services, support services, and/or performance of standard maintenance. The performance obligation is considered a series of distinct services as the performance obligation is satisfied over time and the same time-based input method or usage-based output method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer. Our contracts may also provide our enterprise customers with the option to renew the agreement. This option is not considered to provide the customer with a material right that should be accounted for as a separate performance obligation because the customer would not receive a discount if it decided to renew and the option to renew is generally cancellable by either party subject to the notice of non-renewal requirements specified in the contract. Our contracts may also provide our wholesale Wi-Fi customers with the option to purchase additional future services. We do not consider this option to provide the customer with a material right that should be accounted for as a separate performance obligation since the cost of the additional future services are generally at market rates for such services and we are not automatically obligated to stand ready to deliver these additional goods or services because the customer may reject our proposal. Periodically, we install and sell Wi-Fi networks to customers where we do not have service contracts or remaining obligations beyond the installation of those networks and we recognize build-out fees for

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

# 2. Summary of significant accounting policies (Continued)

such projects as revenue when the installation work is completed, and the network has been accepted by the customer.

Our contract fee structure may include varying components of a minimum fee and usage-based fees. Minimum fees represent fixed price consideration while usage-based fees represent variable consideration. With respect to variable consideration, our commitment to our wholesale Wi-Fi customers consists of providing continuous access to the network. It is therefore a single performance obligation to stand ready to perform and we allocate the variable fees charged for usage when we have the contractual right to bill. The variable component of revenue is recognized based on the actual usage during the period.

Wholesale Wi-Fi revenue is recognized as it is earned over the relevant contract term with variable consideration recognized when we have the contractual right to bill.

## Advertising

We generally enter into short-term cancellable insertion orders with our advertising customers for advertising campaigns that are served at our managed and operated locations and other locations where we solely provide authorized access to a partner's Wi-Fi network through sponsored and promotional programs. Our sponsorship advertising arrangements are generally priced under a cost per engagement structure, which is a set price per click or engagement, or a cost per install structure for third party application downloads. Our display advertising arrangements are priced based on cost per thousand impressions. Insertion orders may also include bonus items. Our advertising customer contracts may contain multiple performance obligations with each distinct service. These distinct services may include an advertisement video or banner impressions in the contract bundled with the requirement to provide network, space on the website, and integration of customer advertisement onto the website, and each is generally considered to be its own performance obligation. The performance obligations are considered a series of distinct services as the performance obligations are satisfied over time and the same action-based output method would be used to measure our progress toward complete satisfaction of the performance obligation to transfer each distinct service in the series to the customer.

The contract transaction price is comprised of variable consideration based on the stated rates applied against the number of units delivered inclusive of the bonus units subject to the maximums provided for in the insertion order. It is customary for us to provide additional units over and above the amounts contractually required; however, there are a number of factors that can also negatively impact our ability to deliver the units required by the customer such as service outages at the venue resulting from power or circuit failures and customer cancellation of the remaining undelivered units under the insertion order due to campaign performance or budgetary constraints. Typically, the advertising campaign periods are short in duration. We therefore use the contractual rates per the insertion orders and actual units delivered to determine the transaction price each period end. The transaction price is allocated to each performance obligation based on the standalone selling price of each performance obligation.

Advertising revenue is recognized ratably over the service period based on actual units delivered subject to the maximums provided for in the insertion order.

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

#### Pre-ASC 606 adoption

We recognize revenue when an arrangement exists, services have been rendered, fees are fixed or determinable, no significant obligations remain related to the earned fees and collection of the related receivable is reasonably assured. Revenue is presented net of any sales and value added taxes.

Revenue generated from access to our DAS networks consists of build-out fees and recurring access fees under certain long-term contracts with telecom operators. Build-out fees paid upfront are generally deferred and recognized ratably over the term of the estimated customer relationship period, once the build-out is complete. Periodically, we install and sell Wi-Fi and DAS networks to customers where we do not have service contracts or remaining obligations beyond the installation of those networks and we recognize build-out fees for such projects as revenue when the installation work is completed, and the network has been accepted by the customer. Minimum monthly access fees for usage of the DAS networks are non-cancellable and generally escalate on an annual basis. These minimum monthly access fees are recognized ratably over the term of the telecom operator agreement. The initial term of our contracts with telecom operators generally range from five to twenty years and the agreements generally contain renewal clauses. Revenue from DAS network access fees in excess of the monthly minimums is recognized when earned.

Subscription fees from military and retail customers are paid monthly in advance and revenue is deferred for the portions of monthly recurring subscription fees collected in advance. We provide refunds for our military and retail services on a case-by-case basis. These amounts are not significant and are recorded as contra-revenue in the period the refunds are made. Subscription fee revenue is recognized ratably over the subscription period. Revenue generated from military and retail single-use access is recognized when access is provided.

Services provided to wholesale Wi-Fi partners generally contain several elements including: (i) a term license to use our software to access our Wi-Fi network, (ii) access fees for Wi-Fi network usage, and/or (iii) professional services for software integration and customization and to maintain the Wi-Fi service. The term license, monthly minimum network access fees and professional services are billed monthly based upon predetermined fixed rates. Once the term license for integration and customization are delivered, the fees from the arrangement are recognized ratably over the remaining term of the service arrangement. The initial term of the license agreements is generally between one to three years and the agreements generally contain renewal clauses. Revenue for Wi-Fi network access fees in excess of the monthly minimum amounts is recognized when earned. All elements within existing service arrangements are generally delivered and earned concurrently throughout the term of the respective service arrangement.

In instances where the minimum monthly Wi-Fi and DAS network access fees escalate over the term of the wholesale service arrangement, an unbilled receivable is recognized when performance is within our control and when we have reasonable assurance that the unbilled receivable balance will be collected.

We adopted the provisions of ASU 2009-13, Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements, on a prospective basis on January 1, 2011. For multiple-deliverable arrangements entered into prior to January 1, 2011 that are accounted for under ASC 605-25, Revenue Recognition—Multiple-Deliverable Revenue Arrangements, we defer recognition of revenue for the full arrangement

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

and recognize all revenue ratably over the term of the estimated customer relationship period for DAS arrangements and the wholesale service period for Wi-Fi platform service arrangements, as we do not have evidence of fair value for the undelivered elements in the arrangement. For multiple-deliverable arrangements entered into or materially modified after January 1, 2011 that are accounted for under ASC 605-25, we evaluate whether separate units of accounting exist and then allocate the arrangement consideration to all units of accounting based on the relative selling price method using estimated selling prices if vendor specific objective evidence and third-party evidence is not available. We recognize the revenue associated with the separate units of accounting upon completion of such services or ratably over the term of the estimated customer relationship period for DAS arrangements and the wholesale service period for Wi-Fi platform service arrangements.

Advertising revenue is generated from advertisements on our managed and operated or partner networks. In determining whether an arrangement exists, we ensure that a binding arrangement is in place, such as a standard insertion order or a fully executed customer-specific agreement. Obligations pursuant to our advertising revenue arrangements typically include a minimum number of units or the satisfaction of certain performance criteria. Advertising and other revenue is recognized when the services are performed.

# Foreign currency translation

Our Brazilian subsidiary uses the Brazilian Real as its functional currency. Assets and liabilities of our Brazilian subsidiary are translated to U.S. dollars at period-end rates of exchange, and revenues and expenses are translated at average exchange rates prevailing for each month. The resulting translation adjustments are made directly to a separate component of other comprehensive loss, which is reflected in stockholders' equity in our consolidated balance sheets. As of December 31, 2018 and December 31, 2017, the Company had \$(1,295) and \$(898), respectively, of cumulative foreign currency translation adjustments, net of tax, which was \$0 as of December 31, 2018 and December 31, 2017 due to the full valuation allowance established against our deferred tax assets, in accumulated other comprehensive loss.

The functional currency for all of our other foreign subsidiaries is the U.S. dollar. Gains and losses from the revaluation of foreign currency transactions and monetary assets and liabilities are included in the consolidated statements of operations.

#### Network access

Network access costs consist primarily of revenue share payments to venue owners where our managed and operated hotspots are located, usage-based fees to our roaming network partners for access to their networks, depreciation of equipment related to network build-out projects in our managed and operated locations, and bandwidth and other Internet connectivity expenses in our managed and operated locations.

## Advertising, marketing and promotion costs

Advertising production costs are expensed the first time the advertisement is run. No advertising production costs were capitalized for the years ended December 31, 2018, 2017 and 2016. All other costs of advertising, marketing and promotion are expensed as incurred. Advertising expenses charged to operations totaled \$2,213, \$2,245 and \$1,925 for the years ended December 31, 2018, 2017 and 2016, respectively.

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

#### Stock-based compensation

Our stock-based compensation consists of stock options, and restricted stock units ("RSU") granted to employees and non-employees. We have shifted our stock-based compensation from stock options to RSUs and no stock options have been granted since 2014.

We recognize stock-based compensation expense in accordance with guidance provided by FASB ASC 718, Compensation—Stock Compensation. We measure employee stock-based compensation cost at grant date, based on the estimated fair value of the award and recognize the cost on a straight-line basis over the employee requisite service period. We recognize stock-based compensation expense for performance-based RSUs when we believe that it is probable that the performance objectives will be met. Forfeitures are accounted for when they occur.

## Income taxes

We account for income taxes in accordance with FASB ASC 740, *Accounting for Income Taxes*, which requires the recognition of deferred tax assets and liabilities for the future consequences of events that have been recognized in our accompanying consolidated financial statements or tax returns. The measurement of the deferred items is based on enacted tax laws. In the event the future consequences of differences between financial reporting bases and the tax bases of our assets and liabilities result in a deferred tax asset, ASC 740 requires an evaluation of the probability of being able to realize the future benefits indicated by such asset. A valuation allowance related to a deferred tax asset is recorded when it is more likely than not that some portion or the entire deferred tax asset will not be realized. As part of the process of preparing our accompanying consolidated financial statements, we are required to estimate our income taxes in each of the jurisdictions in which we operate. We also assess temporary differences resulting from differing treatment of items, such as deferred revenue, for tax and accounting differences. We record a valuation allowance to reduce the deferred tax assets to the amount of future tax benefit that is more likely than not to be realized.

ASC 740 prescribes a recognition threshold and measurement methodology to recognize and measure an income tax position taken, or expected to be taken, in a tax return. The evaluation of a tax position is based on a two-step approach. The first step requires an entity to evaluate whether the tax position would "more likely than not" be sustained upon examination by the appropriate taxing authority. The second step requires the tax position be measured at the largest amount of tax benefit that is greater than 50% likely of being realized upon ultimate settlement. In addition, previously recognized benefits from tax positions that no longer meet the new criteria would no longer be recognized. Changes in recognition or measurement are reflected in the period in which the change occurs.

## **Non-controlling interests**

Non-controlling interests are comprised of minority holdings in Chicago Concourse Development Group, LLC ("CCDG") and Boingo Holding Participacoes Ltda ("BHPL").

Under the terms of the LLC agreement for CCDG, we are generally required to distribute annually to the CCDG non-controlling interest holders 30% of allocated net profits less capital

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

expenditures of the preceding year. For the years ended December 31, 2018, 2017 and 2016, we made distributions of \$614, \$125 and \$286, respectively, to non-controlling interest holders of CCDG.

Under the terms of the LLC agreement for BHPL, we attributed profits and losses to the non-controlling interest in BHPL in proportion to their holdings. For the years ended December 31, 2018, 2017 and 2016, we made no distributions to the non-controlling interest holder of BHPL.

## Net loss per share attributable to common stockholders

Basic net loss per share attributable to common stockholders is calculated by dividing loss attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted net loss per share attributable to common stockholders adjusts the basic weighted average number of shares of common stock outstanding for the potential dilution that could occur if stock options and RSUs were exercised or converted into common stock. Our common stockholders are not entitled to receive any dividends.

## Segment and geographic information

We operate as one reportable segment; a service provider of wireless connectivity solutions across our managed and operated network and aggregated network for mobile devices such as laptops, smartphones, tablets and other wireless-enabled consumer devices. This single segment is consistent with the internal organization structure and the manner in which operations are reviewed and managed by our Chief Executive Officer, the chief operating decision maker.

All significant long-lived tangible assets are held in the United States of America. We do not disclose sales by geographic area because to do so would be impracticable.

The following is a summary of our revenue disaggregated by product offerings:

	 Year Ended December 31,					
	 2018		2017(1)	2016(1)		
Revenue:						
DAS	\$ 95,216	\$	80,552	\$	58,182	
Military/multifamily	77,721		55,129		39,975	
Wholesale—Wi-Fi	47,481		31,529		22,221	
Retail	17,630		24,926		26,636	
Advertising and other	12,773		12,233		12,330	
Total revenue	\$ 250,821	\$	204,369	\$	159,344	
		==				

(1) As noted above, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

# Recent accounting pronouncements

In August 2018, the FASB issued ASU 2018-15, Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud

## **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

## 2. Summary of significant accounting policies (Continued)

Computing Arrangement That Is a Service Contract, which requires customers to apply the same criteria for capitalizing implementation costs incurred in a cloud computing arrangement that is hosted by the vendor as they would for an arrangement that has a software license. The standard is effective for interim and annual periods beginning after December 15, 2019 and early adoption is permitted. The standard can be adopted prospectively or retrospectively. We are currently evaluating the expected impact of this new standard.

In June 2018, the FASB issued ASU 2018-07, *Improvements to Nonemployee Share-Based Payment Accounting*, which eliminates the separate accounting model for nonemployee share-based payment awards and generally requires companies to account for share-based payment transactions with nonemployees in the same way as share-based payment transactions with employees. The accounting remains different for attribution, which represents how the equity-based payment cost is recognized over the vesting period, and a contractual term election for valuing nonemployee equity share options. The standard is effective for interim and annual periods beginning after December 15, 2018. Early adoption is permitted for all entities on a modified retrospective basis. We currently do not expect that this standard will have a material impact on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which requires lessees to recognize assets and liabilities for all leases with lease terms of more than 12 months on the balance sheet. Under the new guidance, the recognition, measurement, and presentation of expenses and cash flows arising from a lease by a lessee will depend on its classification as a finance or operating lease. The standard is effective for interim and annual periods beginning after December 15, 2018 with early adoption permitted. We have selected January 1, 2019 as our effective date. ASU 2016-02 provided for the adoption of the new leases standard using a modified retrospective transition method. In July 2018, the FASB issued ASU 2018-11, *Leases (Topic 842): Targeted Improvements*, which provided an additional (and optional) transition method to adopt the new leases standard whereby an entity initially applies the new leases standard at the adoption date and recognizes a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. We expect to adopt the provisions of ASU 842 under the optional transition method prescribed under ASU 2018-11. We are completing our evaluation of the impact of the new standard on our accounting policies, processes, and system requirements. We have assigned internal resources and engaged a third-party service provider to assist in the evaluation and implementation. Based on the lease portfolio as of December 31, 2018, we anticipate recording additional lease assets and lease liabilities on our consolidated balance sheets. As presented in Note 15, as of December 31, 2018, our total undiscounted minimum payments under our operating leases were \$26,158.

# 3. Acquisitions

## Elauwit Networks, LLC

On August 1, 2018, we acquired the assets of Elauwit Networks, LLC ("Elauwit") for \$28,000 plus other contingent consideration. Elauwit provides data and video services to multi-unit dwelling properties including student housing, condominiums, apartments, senior living, and hospitality industries throughout the U.S. In addition, Elauwit builds and maintains the network that supports these services for property owners and managers and provides support for residents and employees.

### **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 3. Acquisitions (Continued)

The acquisition has been accounted for under the acquisition method of accounting in accordance with FASB ASC 805, *Business Combinations*. As such, the assets acquired and liabilities assumed are recorded at their acquisition-date fair values. The total purchase price was \$29,537, which includes contingent consideration fair valued at \$961. At the closing date, we paid cash of \$15,576. \$13,000 of the purchase price was held back for the following: (i) \$11,000 held back for third-party consents not obtained at closing for certain customer agreements, which will be released as Elauwit delivers third-party consents with respect to such customer agreements; and (ii) a \$2,000 indemnification holdback that is being retained for a period of 12 months following the closing of the acquisition. As of December 31, 2018, we paid \$9,048 of the amounts held back for third-party consents. We paid the remaining \$1,952 for amounts held back for third-party consents in January 2019. The contingent consideration could require payments in the aggregate amount of up to \$15,000 that would be due and payable subject to certain conditions and the successful achievement of annual revenue targets for the acquired business during the 2019 and 2020 fiscal years. We do not expect to make any payments related to the 2018 annual revenue targets as the targets were not met as of December 31, 2018. The contingent consideration is subject to acceleration under certain corporate events.

The fair value of the contingent consideration is based on Level 3 inputs. Further changes in the fair value of the contingent consideration will be recorded through operating income (loss). The contingent consideration was valued at the date of acquisition using the Monte Carlo method reflecting the average expected monthly revenue, an annual risk-free rate of 2.78%, and an annual revenue volatility rate of 40%.

The identifiable intangible assets were primarily valued using the excess earnings, relief from royalty, and loss-of-revenue methods using discount rates ranging from 8.0% to 21.0% and a 1.0% royalty rate, where applicable. The amortizable intangible assets are being amortized on a straight-line basis over their estimated useful lives. We allocated the excess of the purchase price over the fair value of assets acquired and liabilities assumed to goodwill, which is deductible for tax purposes. The goodwill arising from the Elauwit acquisition is attributable primarily to expected synergies and other benefits, including the acquired workforce, from combining Elauwit with us.

ASC 805 provides for a measurement period not to exceed one year from the acquisition date to adjust the provisional amounts recognized at the acquisition date to reflect new information obtained about facts and circumstances that existed as of the acquisition date that, if known, would have affected the measurement of the amounts recognized as of that date. To date, we have not recorded any

# Notes to the Consolidated Financial Statements (Continued)

(In thousands, except shares and per share amounts)

# 3. Acquisitions (Continued)

material measurement period adjustments. The following summarizes the preliminary purchase price allocation:

	 stimated ir Value	Weighted Average Estimated Useful Life (years)
Consideration:		
Cash paid	\$ 15,576	
Holdback consideration	13,000	
Contingent consideration	961	
Total consideration	\$ 29,537	
Recognized amounts of identifiable assets acquired and liabilities assumed:		
Accounts receivable	\$ 4,494	
Prepaid expenses and other current assets	1,687	
Property and equipment	195	
Other non-current assets	177	
Accounts payable	(2,049)	
Accrued expenses and other liabilities	(683)	
Deferred revenue	(3,854)	
Other non-current liabilities	(307)	
Net tangible liabilities acquired	(340)	
Backlog	7,030	5.0
Customer relationships	2,490	10.0
Partner relationships	1,200	10.0
Transition services agreement	540	2.0
Non-compete agreement	1,380	3.0
Goodwill	17,237	
Total purchase price	\$ 29,537	

The following table presents the results of Elauwit included in the Company's revenue and net loss:

	Year_	Year Ended December 31,			
	2018	2017	2016		
Revenue	\$ 11,2	28 \$ —	\$ —		
Net loss	(2,3	49) —	_		

# Pro forma results (Unaudited)

The following table presents the unaudited pro forma results of the Company for the years ended December 31, 2018 and 2017 as if the acquisition of Elauwit had occurred on January 1, 2017 and therefore includes Elauwit's revenue and net income (loss), as adjusted, for those periods. These results

# Notes to the Consolidated Financial Statements (Continued)

(In thousands, except shares and per share amounts)

### 3. Acquisitions (Continued)

are not intended to reflect the actual operations of the Company had the acquisition occurred on January 1, 2017. Income taxes were calculated based on the effective tax rates for 2018 and 2017, excluding the tax effects on the equity component of Convertible Notes recorded in 2018. Acquisition transaction costs have been excluded from the pro forma net loss.

	Year Ended December 31,			
		2018		2017(2)
Revenue	\$	268,693	\$	229,503
Net loss		(739)		(20,827)
Net loss attributable to common stockholders		(2,224)		(21,417)
Net loss per share attributable to common stockholders				
Basic	\$	(0.05)	\$	(0.54)
Diluted	\$	(0.05)	\$	(0.54)

<sup>(2)</sup> As noted above, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

# 4. Cash and cash equivalents

Cash and cash equivalents consisted of the following:

	December 31,			1,
		2018		2017
Cash and cash equivalents:				
Cash	\$	11,689	\$	24,430
Money market accounts		137,723		2,255
Total cash and cash equivalents	\$	149,412	\$	26,685

For the years ended December 31, 2018, 2017 and 2016, interest income was \$742, \$17 and \$8, respectively, which is included in interest and other expense, net in the accompanying consolidated statements of operations.

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 5. Accounts receivables, net

Included in accounts receivables, net for the periods indicated was the allowance for doubtful accounts, which consisted of the following:

	Allowance for Doubtful Accounts
Balance, December 31, 2015	\$ 605
Additions charged to operations	116
Deductions from reserves, net	(279)
Balance, December 31, 2016	442
Additions charged to operations	773
Deductions from reserves, net	(352)
Balance, December 31, 2017	863
Additions charged to operations	363
Deductions from reserves, net	(43)
Balance, December 31, 2018	\$ 1,183

### 6. Contract assets and contract liabilities

The opening and closing balances of our contract asset, net, contract liability, net, and receivables balances from contracts with customers for the year ended December 31, 2018 are as follows:

	Contract			Contract Liabilities,		
	Asse	ets, Net		Net		
Balance at January 1, 2018	\$	798	\$	204,472		
Balance at December 31, 2018		468		217,733		
Change	\$	(330)	\$	13,261		

The current and non-current portions of our contract assets, net is included within prepaid expenses and other current assets and other assets, respectively, and current and non-current portions of our contract liabilities, net are included within deferred revenue and deferred revenue, net of current portion, respectively, in our consolidated balance sheets. Contract assets, net is generated from our multifamily and wholesale Wi-Fi contracts and the change in the contract assets, net balance includes activity related to amounts acquired from the Elauwit acquisition and amounts invoiced offset by revenue recognized from performance obligations satisfied in the current reporting period.

Contract liabilities are recorded when fees are collected, or we have an unconditional right to consideration (a receivable) in advance of delivery of goods or services. The change in contract liabilities, net balance is related to amounts acquired from the Elauwit acquisition and customer activity associated with each of our product offerings including the receipt of cash payments and the

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 6. Contract assets and contract liabilities (Continued)

satisfaction of our performance obligations. Revenues for the year ended December 31, 2018 include the following:

	er Ended ember 31, 2018
Amounts included in the beginning of period contract liability balance	\$ 85,592
Amounts associated with performance obligations satisfied in previous	
periods	378

As of December 31, 2018, the aggregate amount of the transaction price allocated to remaining service performance obligations for our DAS contracts was \$202,113. We expect to recognize this revenue as service is provided over the remaining contract term. As of December 31, 2018, our DAS contracts have a remaining duration of less than one year to sixteen years.

Certain of our wholesale Wi-Fi contracts include variable consideration based on usage. This variable consideration has been excluded from the disclosure of remaining performance obligations. As of December 31, 2018, the aggregate amount of the transaction price allocated to remaining service performance obligations for certain of our wholesale Wi-Fi contracts with guaranteed minimum consideration was \$9,999. We expect to recognize this revenue as service is provided over the remaining contract term. As of December 31, 2018, our wholesale Wi-Fi contracts have a remaining duration of less than one year to sixteen years.

Information about remaining performance obligations that are part of a contract that has an original expected duration of one year or less have been excluded from the above, which primarily consists of network installations for our multifamily customers and monthly service contracts.

### 7. Property and equipment

The following is a summary of property and equipment, at cost less accumulated depreciation and amortization:

	December 31,			
		2018		2017
Leasehold improvements	\$	474,808	\$	418,023
Software		51,534		42,281
Construction in progress		40,369		27,291
Computer equipment		14,215		13,245
Furniture, fixtures and office equipment		2,141		1,806
Total property and equipment		583,067		502,646
Less: accumulated depreciation and amortization		(268,888)		(240,287)
Total property and equipment, net	\$	314,179	\$	262,359

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 7. Property and equipment (Continued)

Included in property and equipment at December 31, 2018 and 2017 was equipment acquired under capital leases totaling \$16,284 and \$12,714, respectively, and related accumulated depreciation and amortization of \$6,245 and \$3,744, respectively.

Depreciation and amortization expense, which includes depreciation and amortization for property and equipment under capital leases, is allocated on a specific identification basis as follows on the accompanying consolidated statements of operations:

	Year Ended December 31,					1,
	2018		8 2017			2016
Network access	\$	49,766	\$	42,435	\$	27,013
Network operations		17,590		16,382		13,966
Development and technology		10,443		9,247		7,207
General and administrative		1,038		1,033		1,016
Total depreciation and amortization of property						
and equipment	\$	78,837	\$	69,097	\$	49,202

During the years ended December 31, 2018, 2017, and 2016 we recognized \$148, \$882, and \$54, respectively, of impairment losses primarily related to construction in progress projects that were abandoned. During the years ended December 31, 2018 and 2017, we also recognized \$90 and \$276, respectively, of losses on disposals of property and equipment.

# 8. Goodwill and intangible assets

### Goodwill

The following table sets forth the changes in our goodwill balance, for all periods presented:

	Goodwill
Balance, December 31, 2016 and December 31, 2017	\$ 42,403
Acquisition of Elauwit	17,237
Balance, December 31, 2018	\$ 59,640

# Notes to the Consolidated Financial Statements (Continued)

(In thousands, except shares and per share amounts)

# 8. Goodwill and intangible assets (Continued)

# Intangible assets

The following table sets forth the changes in our intangible assets balance, for all periods presented:

	<u> Intan</u>	gible Assets
Balance, December 31, 2016	\$	13,783
Amortization expense		(3,520)
Balance, December 31, 2017		10,263
Additions		12,640
Amortization expense		(3,751)
Balance, December 31, 2018	\$	19,152

Intangible assets at December 31, 2018 consist of the following:

	H	listorical Cost	cumulated ortization	Net
Venue contracts	\$	20,530	\$ (13,829) \$	6,701
Backlog		7,030	(586)	6,444
Customer and partner relationships		3,780	(206)	3,574
Non-compete agreements, technology and other		5,084	(2,651)	2,433
	\$	36,424	\$ (17,272) \$	19,152

Intangible assets at December 31, 2017 consist of the following:

	H	istorical	Ac	cumulated	
		Cost	An	ortization	Net
Venue contracts	\$	22,061	\$	(13,835)	\$ 8,226
Non-compete agreements, technology and other		6,844		(4,807)	 2,037
	\$	28,905	\$	(18,642)	\$ 10,263

The decrease in our intangible assets cost and accumulated amortization balances from 2017 to 2018 is primarily related to the write-off of venue contract intangible assets that have expired.

# **Notes to the Consolidated Financial Statements (Continued)**

### (In thousands, except shares and per share amounts)

### 8. Goodwill and intangible assets (Continued)

Amortization expense for fiscal years 2019 through 2023 and thereafter is as follows:

Year	Amortiza	ation Expense
<u>Year</u> 2019	\$	4,435
2020		4,221
2021		3,494
2022		3,030
2023		1,863
Thereafter		2,109
	\$	19,152

### 9. Accrued expenses and other liabilities

Accrued expenses and other liabilities consisted of the following:

	December 31,			31,
	2018			2017
Accrued construction in progress	\$	20,930	\$	12,661
Accrued customer liabilities		15,219		7,100
Revenue share		5,514		5,506
Salaries and wages		4,425		5,066
Accrued taxes		2,745		1,897
Holdback consideration		2,000		_
Acquisition purchase consideration		1,952		_
Accrued professional fees		1,434		1,979
Accrued partner network		1,228		1,799
Other		7,206		6,397
Total accrued expenses and other liabilities	\$	62,653	\$	42,405

### 10. Convertible Notes

In October 2018, the Company sold, through the initial purchasers, convertible senior notes ("Convertible Notes") to qualified institutional buyers pursuant to Rule 144A of the Securities Act of 1933, as amended, for gross proceeds of \$201,250. The Convertible Notes are senior, unsecured obligations with interest payable semi-annually in cash at a rate of 1.00% per annum on April 1st and October 1st of each year, beginning on April 1, 2019. The Convertible Notes will mature on October 1, 2023 unless they are redeemed, repurchased or converted prior to such date. Prior to April 1, 2023, the Convertible Notes are convertible at the option of holders only during certain periods and upon satisfaction of certain conditions. Thereafter, the Convertible Notes will be convertible at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Upon conversion, the Convertible Notes may be settled in shares of the Company's common stock, cash or a combination of cash and shares of the Company's common stock, at the Company's election. It is our current intent to settle the principal and interest amounts of the Convertible Notes with cash.

### **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

#### 10. Convertible Notes (Continued)

The Convertible Notes have an initial conversion rate of 23.6323 shares of common stock per \$1,000 principal amount of the Convertible Notes, which will be subject to customary anti-dilution adjustments in certain circumstances. This represents an initial effective conversion price of approximately \$42.31 per share, which represents a premium of approximately 30% to the \$32.55 per share closing price of the Company's common stock on October 2, 2018, the date the Company priced the offering.

The Company may redeem all or any portion of the Convertible Notes, at its option, on or after October 5, 2021, at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date, if the last reported sale price of the Company's stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides written notice of redemption.

Holders of Convertible Notes may require the Company to repurchase their Convertible Notes upon the occurrence of certain events that constitute a fundamental change under the indenture governing the Convertible Notes at a fundamental change repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the date of repurchase. In connection with certain corporate events or if the Company issues a notice of redemption prior to the maturity date, it will, under certain circumstances, increase the conversion rate for holders who elect to convert their Convertible Notes in connection with such corporate event or notice of redemption.

In connection with the pricing of the Convertible Notes, the Company entered into privately negotiated capped call transactions with a financial institution. The capped call transactions initially cover, subject to customary anti-dilution adjustments, the number of shares of the Company's common stock that initially underlie the Convertible Notes. The cap price of the capped call transactions is initially \$65.10 per share of the Company's common stock, representing a premium of 100% above the closing price of \$32.55 per share of the Company's common stock on October 2, 2018, and is subject to certain adjustments under the terms of the capped call transactions. The capped call transactions are expected generally to reduce potential dilution to the Company's common stock upon conversion of the Convertible Notes and/or offset the potential cash payments that the Company could be required to make in excess of the principal amount of any converted Convertible Notes upon conversion thereof, with such reduction and/or offset subject to a cap based on the cap price. The Company paid \$23,969 for the capped call transactions, which was recorded as additional paid-in capital, using a portion of the gross proceeds from the sale of the Convertible Notes. The capped call is expected to be tax deductible as the Company elected to integrate the capped call into the Convertible Notes for tax purposes. The tax effect on the equity component of the Convertible Notes of \$5,686 was recorded as additional paid-in capital.

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 10. Convertible Notes (Continued)

The following table summarizes the Convertible Notes as of December 31, 2018:

	De	December 31, 2018	
Par value of the Convertible Notes	\$	201,250	
Unamortized debt discounts		(45,058)	
Unamortized debt issuance costs		(4,522)	
Net carrying value of Convertible Notes	\$	151,670	

The fair value of our Convertible Notes was \$169,970 as of December 31, 2018. The estimated fair value of Convertible Notes is based on market rates and the closing trading price of the Convertible Notes as of December 31, 2018 and is classified as Level 2 in the fair value hierarchy. As of December 31, 2018, the if-converted value of the Convertible Notes did not exceed the principal amount.

The Company incurred debt issuance costs of \$6,169 in October 2018. In accordance with FASB ASC 470, *Debt*, these costs were allocated to debt and equity components in proportion to the allocation of proceeds. \$1,442 of issuance costs were recorded as additional paid-in capital and such amounts are not subject to amortization. The remaining issuance costs of \$4,727 are recorded as debt issuance costs in the net carrying value of Convertible Notes. The debt issuance costs are amortized on an effective interest basis over the term of the Convertible Notes. Debt issuance cost amortization expense was \$205 for the year ended December 31, 2018, which was included in interest and other expense, net in the accompanying consolidated statements of operations for the year ended December 31, 2018. The following table sets forth interest expense related to the Convertible Notes for the year ended December 31, 2018:

	December 31, 2018
Contractual interest expense	\$ 2,677
Amortization of debt issuance costs	205
Amortization of debt discount	1,992
Total	\$ 4,874
Effective interest rate of the liability component	7.1%

During the year ended December 31, 2018, we capitalized \$508 of amortization and interest expense related to the Convertible Notes.

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

#### 10. Convertible Notes (Continued)

Amortization expense for our debt discount and debt issuance costs for fiscal years 2019 through 2023 is as follows:

Year	Debt _Discounts	Debt Issuance Costs
<u>Year</u> 2019	\$ 8,245	\$ 849
2020	8,864	901
2021	9,528	956
2022	10,241	1,015
2023	8,180	801
	\$ 45,058	\$ 4,522

### 11. Credit Facility

In February 2019, we entered into a new Credit Agreement (the "New Credit Agreement") and related agreements with Bank of America, N.A. acting as agent for lenders named therein, including Bank of America, N.A., Silicon Valley Bank, Bank of the West, Zions Bancorporation, N.A. dba California Bank & Trust, and Barclays Bank PLC (the "Lenders"), for a secured credit facility in the form of a revolving line of credit of up to \$150,000 (the "Revolving Line of Credit") and a term loan of \$3,500 (the "Term Loan" and together with the Revolving Line of Credit, the "New Credit Facility"). The New Credit Facility replaced the November 2014 Credit Facility with Bank of America, N.A. acting as agents for lenders named therein, which expired on November 21, 2018. We may use borrowings under the New Credit Facility for general working capital and corporate purposes. In general, amounts borrowed under the New Credit Facility are secured by a lien against all of our assets, with certain exclusions.

Amounts borrowed under the Revolving Line of Credit and Term Loan will bear variable interest at the greater of LIBOR plus 1.75% - 2.75% or Lender's Prime Rate plus 0.75% - 1.75% per year and we will pay a fee of 0.25% - 0.5% per year on any unused portion of the Revolving Line of Credit. The Term Loan requires quarterly payments of interest and principal until it is repaid in full on the maturity date but may be prepaid in whole or part at any time. Our New Credit Facility will mature on April 3, 2023. Repayment of amounts borrowed under the New Credit Facility may be accelerated in the event that we are in violation of the representations, warranties and covenants made in the New Credit Agreement, including certain financial covenants set forth therein, and under other specified default events including, but not limited to, non-payment or inability to pay debt, breach of cross default provisions, insolvency provisions, and change of control.

The Company is subject to customary financial and non-financial covenants under the New Credit Facility, including a minimum quarterly consolidated senior secured leverage ratio, a minimum quarterly consolidated total leverage ratio, a maximum quarterly consolidated fixed charge coverage ratio, and cash on hand minimums.

The Company incurred \$224 of debt issuance costs related to the New Credit Facility in 2018. Debt issuance costs will be amortized on a straight-line basis over the term of the New Credit Facility. Amortization expense related to debt issuance costs for the previous Credit Facility are included in

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 11. Credit Facility (Continued)

interest and other expense in the accompanying consolidated statements of operations for the years ended December 31, 2018, 2017, and 2016. Amortization and interest expense for the November 2014 Credit Agreement capitalized amounted to \$288, \$773, and \$823 for the years ended December 31, 2018, 2017, and 2016, respectively. Amortization and interest expense for the previous Credit Agreement recorded amounted to \$106, \$187, and \$309 for the years ended December 31, 2018, 2017, and 2016, respectively. Interest rates for our previous Credit Facility for the period from January 1, 2018 to November 21, 2018 ranged from 4.2% to 6.8%.

#### 12. Fair value measurement

The following table sets forth our financial assets and liabilities that are measured at fair value on a recurring basis:

At December 31, 2018	Level 1	Level 2	Level 3	Total
Assets:				
Money market accounts	\$ 137,723	\$ —	\$ —	\$ 137,723
Total assets	\$ 137,723	\$ —	\$ —	\$ 137,723
Liabilities:				
Contingent consideration	\$ —	\$ —	\$ 961	\$ 961
Total liabilities	\$	\$	\$ 961	\$ 961

At December 31, 2017	Level 1	Level 2	Level 3	Total
Assets:				
Money market accounts	\$ 2,255	\$ —	\$ —	\$ 2,255
Total assets	\$ 2,255	\$ —	\$ —	\$ 2,255

The Company's contingent consideration obligation was initially recorded at fair value and the Company will revalue this obligation each reporting period until the related contingencies are resolved. The fair value measurement is estimated using probability-weighted discounted cash flow approaches that are based on significant unobservable inputs related to achievement of estimated annual sales and are reviewed quarterly. Significant changes to estimated annual sales and discount rates would result in corresponding changes in the fair value of this obligation. There were no significant changes to the fair value of our contingent consideration liabilities during the period ended December 31, 2018. The following table presents a reconciliation of the beginning and ending amounts related to the fair value of contingent consideration categorized as Level 3:

\$ —
961
_
\$ 961

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 13. Stockholders' equity

At December 31, 2018 and 2017, we are authorized to issue up to 100,000,000 shares of common stock. We are required to reserve and keep available out of our authorized but unissued shares of common stock such number of shares sufficient to effect the exercise of all outstanding common stock warrants, plus shares granted and available for grant under our Amended and Restated 2001 Stock Incentive Plan (the "2001 Plan") and 2011 Equity Incentive Plan (the "2011 Plan"), as amended. Refer to Note 17 for a discussion of the 2011 Plan amendments.

The amount of such shares of common stock reserved for these purposes is as follows:

	December 31,		
	2018	2017	
	(in thou	isands)	
Outstanding stock options under the 2001 Plan	14	155	
Outstanding stock options under the 2011 Plan	290	1,128	
Outstanding RSUs under the 2011 Plan	3,119	3,324	
Shares available for grant under the 2011 Plan	2,979	3,863	
Total	6,402	8,470	

The Convertible Notes have an initial conversion rate of 23.6323 shares of common stock per \$1,000 principal amount of the Convertible Notes, which will be subject to customary anti-dilution adjustments in certain circumstances. The amount of shares that would be issuable assuming conversion of all of the Convertible Notes is approximately 4,756,000.

# 14. Income taxes

The income tax (benefit) expense by jurisdiction recorded as part of continuing operations consists of the following for the years ended December 31:

	 2018	 2017	2	2016
U.S. federal:				
Current	\$ 18	\$ (6)	\$	55
Deferred	(4,569)	(2,787)		345
Total U.S. federal	\$ (4,551)	\$ (2,793)	\$	400
U.S. state and local:				
Current	\$ 285	\$ 503	\$	69
Deferred	(1,048)	212		(42)
Total U.S. state and local	\$ (763)	\$ 715	\$	27
Foreign:				
Current	\$ 161	\$ 	\$	
Total foreign	\$ 161	\$	\$	

In 2018, federal, state and local deferred tax expense of \$5,686 related to the equity component of the Convertible Notes was recorded as additional paid-in capital.

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 14. Income taxes (Continued)

Income taxes differ from the amounts computed by applying the U.S. federal income tax rate to pretax income before income taxes as a result of the following for the years ended December 31:

	2018	2017	2016
Federal statutory rate	21.0%	34.0%	34.0%
State and local	19.7	9.6	2.2
Foreign rate differential	(0.5)	(0.7)	(0.4)
Stock options	(47.2)	0.4	(1.5)
Excess tax benefits from stock-based compensation	106.4	34.3	2.8
Non-controlling interests	5.5	1.1	0.6
Valuation allowance	(90.7)	(83.6)	(38.9)
Uncertain tax positions	2.3	0.6	(0.2)
Effect of U.S. tax reform law changes	_	14.7	_
Convertible Notes	94.9	_	_
Other	(5.9)	(0.4)	(0.2)
Income taxes	105.5%	10.0%	(1.6)%

We have a foreign subsidiary in the United Kingdom, which has generated losses since inception resulting in a \$2,022 deferred tax asset with a corresponding valuation allowance as of December 31, 2018. We also have a majority owned foreign subsidiary in Brazil, which has a \$521 deferred tax asset with a corresponding valuation allowance as of December 31, 2018 due to historical operating losses. Foreign loss before income taxes was \$577, \$1,268, and \$856 for 2018, 2017, and 2016, respectively.

As of December 31, 2018, we had an immaterial amount of unremitted earnings in our subsidiaries located outside of the U.S. for which state taxes have not been paid. Our intention is to indefinitely reinvest these earnings outside the U.S. If we were to remit our foreign earnings, we would be subject to state income taxes or withholding taxes imposed on actual distributions, or currency transaction gains (losses) that would result in taxation upon remittance. However, the amounts of any such tax liabilities resulting from the repatriation of foreign earnings are not material.

# **Notes to the Consolidated Financial Statements (Continued)**

### (In thousands, except shares and per share amounts)

### 14. Income taxes (Continued)

Deferred income tax reflects the tax effects of temporary differences that gave rise to significant portions of our deferred tax assets and liabilities and consisted of the following for the years ended December 31:

	2018		2017
Deferred tax assets:			
Net operating loss carryforwards	\$ 34,	545 \$	23,838
Outside basis differences for U.S. partnerships	9,	558	14,306
Stock options	2,	396	4,100
Deferred revenue		640	748
Deferred compensation		120	249
State taxes		80	78
Other	1,	525	1,282
Valuation allowance	(33.	810)	(34,990)
Net deferred tax assets	15,	054	9,611
Deferred tax liabilities:			
Property and equipment	(7,	318)	(6,983)
Convertible Notes	(5,	470)	_
Intangible assets	(3,	339)	(3,632)
Net deferred tax liabilities	(16,	127)	(10,615)
Net deferred taxes	\$ (1,	073) \$	(1,004)

In December 2017, the Tax Cuts and Jobs Act ("TCJA") was enacted in the U.S. TCJA amended the Internal Revenue Code of 1986 and included the following key provisions, which are generally effective for tax years beginning after December 31, 2017, that are determined to have a significant impact on our effective tax rate:

- Reduction of the corporate federal tax rate to 21%;
- Permanent repeal of the alternative minimum tax regime with refunds of excess carryforwards;
- For any net operating losses ("NOLs") generated in tax years beginning after December 31, 2017, repeals carryback ability but permits indefinite carryforward subject to a limitation of utilization to 80% of taxable income;
- For executive compensation in excess of \$1 million, changes covered employees to principal executive officer, principal financial officer, and three other highest paid officers; eliminates the "last day of the tax year" language for determination of a covered employee; removes exceptions for commissions and performance-based compensation; and employees that are covered persons remain covered persons for all future years;
- Permits 100% bonus depreciation for eligible property placed in-service after September 27, 2017 and before January 1, 2023;

# **Notes to the Consolidated Financial Statements (Continued)**

### (In thousands, except shares and per share amounts)

#### 14. Income taxes (Continued)

- Disallows interest expense in excess of 30% of adjusted taxable income, which excludes deductions for depreciation, amortization, or depletion for taxable years beginning after December 31, 2017 and before January 1, 2022 only, but permits indefinite carryforward; and
- Expands income exclusions and/or deduction limitations for certain fringe benefits that we may offer to our employees.

We completed our assessment of the impact of TCJA on our consolidated financial statements as of December 31, 2017 and recorded the impact of the enactment of TCJA in our consolidated financial statements for the year ended December 31, 2017. In 2017, we recorded a \$1,274 income tax benefit resulting from the reduction of the corporate federal tax rate as well as a \$1,766 income tax benefit provided by the indefinite carryforward of NOLs, which are expected to be available to recover our deferred tax liabilities that have an indefinite reversal pattern.

In assessing the realizability of deferred tax assets, we consider whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. As of December 31, 2018 and 2017, we had federal net operating loss carryforwards of approximately \$124,637 and \$82,461, respectively, state net operating loss carryforwards of approximately \$121,091 and \$73,934, respectively, and foreign net operating loss carryforwards of \$11,642 and \$10,811, respectively. The federal net operating loss carryforwards will begin to expire in 2025, and our foreign net operating loss carryforwards have an indefinite life. Our state net operating loss carryforwards will begin to expire in 2032. Our ability to utilize certain of our net operating loss carryforwards may be limited in the event that a change in ownership, as defined in the Internal Revenue Code, occurs in the future.

The following table sets forth the changes in the valuation allowance, for all periods presented:

	Valuation Allowance
Balance, December 31, 2015	\$ 19,548
Additions charged to operations	16,783
Decrease credited to operations	
Balance, December 31, 2016	36,331
Additions charged to operations	16,527
Effect of U.S. tax reform law changes	(17,868)
Decrease credited to operations	_
Balance, December 31, 2017	34,990
Decrease credited to operations	(1,180)
Balance, December 31, 2018	\$ 33,810

The decreases credited to operations in 2018 were related to the deferred tax liabilities established against the equity component of the Convertible Notes.

In reaching the determination of the valuation allowance, we have evaluated all significant available positive and negative evidence including, but not limited to, our three-year cumulative results, trends in our business, expected future results and the character, amount and expiration periods of our

# **Notes to the Consolidated Financial Statements (Continued)**

### (In thousands, except shares and per share amounts)

#### 14. Income taxes (Continued)

net deferred tax assets. The underlying assumptions we used in forecasting future income required significant judgment and took into account our recent performance.

We recognized interest and penalties related to income tax matters in income taxes. Interest and penalties were not material during the years ended December 31, 2018, 2017, and 2016.

We identify, evaluate and measure all uncertain tax positions taken or to be taken on tax returns and record liabilities for the amount of these positions that may not be sustained, or may only partially be sustained, upon examination by the relevant taxing authorities. Although we believe that our estimates and judgments were reasonable, actual results may differ from these estimates. Some or all of these judgments are subject to review by the taxing authorities. As of December 31, 2018 and 2017, we had \$0 in uncertain tax positions. We accrue interest and penalties related to unrecognized tax benefits as a component of income taxes.

A reconciliation of our unrecognized tax benefits, excluding interest and penalties, is as follows:

	Uncertain Tax Positions	
Balance, December 31, 2016	\$	313
Additions for current period tax positions		_
Reversals during the period		(313)
Balance, December 31, 2017 and 2018	\$	

Our annual income taxes and the determination of the resulting deferred tax assets and liabilities involve a significant amount of judgment. Our judgments, assumptions and estimates relative to current income taxes take into account current tax laws, their interpretation of current tax laws and possible outcomes of current and future audits conducted by foreign and domestic tax authorities. We operate within federal, state and international taxing jurisdictions and are subject to audit in these jurisdictions. These audits can involve complex issues which may require an extended period of time to resolve. We are subject to taxation in the United States and in various states. Our tax years 2015 and forward are subject to examination by the IRS and our tax years 2014 and forward are subject to examination by material state jurisdictions. However, due to prior year loss carryovers, the IRS and state tax authorities may examine any tax years for which the carryovers are used to offset future taxable income. We are currently subject to examination by the IRS for our 2015 tax year. Although the ultimate outcome is unknown, we believe that any adjustments that may result from examination is not likely to have a material adverse effect on our consolidated results of operations, financial position or cash flows.

# 15. Commitments and contingencies

# Capital leases, notes payable, and operating leases

We lease equipment, primarily data communication equipment and database software under non-cancellable capital leases that will expire over the next three years. The leases are collateralized by the equipment under the lease. We also purchase data communication equipment under financing arrangements with a non-related third party. Our agreements are collateralized by the equipment and generally contain three-year terms. Interest expense associated with these capital financing

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 15. Commitments and contingencies (Continued)

arrangements for the years ended December 31, 2018, 2017 and 2016 was \$377, \$302 and \$158, respectively. We also lease office space under non-cancellable operating leases and our long-term office leases may include escalation clauses, rent holidays, and/or leasehold improvement incentives. Rent expense for our leases of office and other facilities, which is recorded on a straight-line basis over the term of the lease, for the years ended December 31, 2018, 2017 and 2016 was \$3,323, \$2,936 and \$2,993, respectively.

Future minimum obligations under non-cancellable operating and capital leases and notes payable at December 31, 2018 are as follows:

Years ended December 31,	Lea	Capital ases and Notes ayable	perating Leases
2019	\$	6,844	\$ 3,573
2020		4,324	3,456
2021		669	3,385
2022		_	3,414
2023		_	3,495
Thereafter			8,835
Minimum lease payments		11,837	\$ 26,158
Less: Amounts representing interest ranging from 1.3%			 
to 7.7%		(314)	
Minimum lease payments	\$	11,523	
Current portion	\$	6,612	
Non-current portion	\$	4,911	

As of December 31, 2018 and 2017, the carrying amount reflected in the accompanying consolidated balance sheets for the current portion of capital leases and notes payable of \$6,612 and \$5,771, respectively, and long-term portion of capital leases and notes payable of \$4,911 and \$6,747, respectively, approximates fair value (Level 2) based on the lack of significant change in our credit risk.

During the year ended December 31, 2018, we capitalized \$287 of interest expense related to our capital leases and notes payable.

# Venue guarantees

We have long-term non-cancellable contracts to provide Wi-Fi connectivity and cellular phone access to our DAS network for our managed and operated locations. Our venue contracts generally contain initial terms that range up to 20 years. The venue contracts generally contain renewal clauses and may include escalation clauses. We may pay revenue share to our venues and certain venue contracts include minimum revenue share guarantees. Revenue share expense related to our venue contracts for the years ended December 31, 2018, 2017 and 2016 was \$37,991, \$32,637 and \$27,140, respectively.

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 15. Commitments and contingencies (Continued)

Future minimum obligations under non-cancellable venue contracts at December 31, 2018 are as follows:

	Venue
Year	Guarantees
<u>Year</u> 2019	\$ 14,638
2020	9,023
2021	6,765
2022	5,531
2023	4,781
Thereafter	8,887
	\$ 49,625

### Letters of credit

We have entered into Letter of Credit Authorization agreements (collectively, "Letters of Credit"). The Letters of Credit are irrevocable and serve as performance guarantees that will allow our customers to draw upon the available funds if we are in default. As of December 31, 2018, we have Letters of Credit totaling \$8,244 that are scheduled to expire or renew over the next one-year period. There have been no drafts drawn under these Letters of Credit as of December 31, 2018.

### Legal proceedings

From time to time, we may be subject to claims, suits, investigations and proceedings arising out of the normal course of business. We are not currently a party to any litigation that we believe could have a material adverse effect on our business, financial position, results of operations or cash flows. Legal costs are expensed as incurred.

# Indemnification

Indemnification provisions in our third-party service provider agreements provide that we will indemnify, hold harmless, and reimburse the indemnified parties on a case-by-case basis for losses suffered or incurred by the indemnified parties in connection with any claim by any third party as a result of our website, advertising, marketing, payment processing, collection or customer service activities. The maximum potential amount of future payments we could be required to make under these indemnification provisions is undeterminable. We have never paid a claim, nor have we been sued in connection with these indemnification provisions. At December 31, 2018 and 2017, we have not accrued a liability for these guarantees, because the likelihood of incurring a payment obligation in connection with these guarantees is not probable.

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

#### 15. Commitments and contingencies (Continued)

#### **Employment contracts**

As of December 31, 2018, we have entered into employment contracts with eleven of our officers and other employees. These contracts generally provide for severance benefits, including salary continuation, if employment is terminated by us without cause or by the officer for good reason. In addition, in order to assure that they would continue to provide independent leadership consistent with our best interests in the event of an actual or threatened change in control, the contract also generally provides for certain protections in the event of such a change in control. These protections generally include the payment of certain severance benefits, including salary continuation, upon the termination of employment following a change in control.

### Other matters

We have received a claim from one of our venue partners with respect to contractual terms on our revenue share payments. The claim asserts that we have underpaid revenue share payments and related interest by approximately \$4,600. We are currently in final settlement discussions with our venue partner. As of December 31, 2018, we have accrued for the probable and estimable losses that have been incurred, which have been recorded as general and administrative expenses in the consolidated statements of operations. We are not currently a party to any other claims that we believe could have a material adverse effect on our business, financial position, results of operations or cash flows.

#### 16. Stock repurchases

On April 1, 2013, the Company approved a stock repurchase program to repurchase up to \$10,000 of the Company's common stock in the open market, exclusive of any commissions, markups or expenses. The stock repurchased will be retired and will resume the status of authorized but unissued shares of common stock. The Company did not repurchase any of our common stock during the years ended December 31, 2018, 2017, and 2016. As of December 31, 2018, the remaining approved amount for repurchases was approximately \$5,180.

### 17. Stock incentive plans

In March 2011, our board of directors approved the 2011 Plan. The 2011 Plan provides for the grant of incentive and non-statutory stock options, stock appreciation rights, restricted shares of our common stock, stock units, and performance cash awards. As of December 31, 2018, 13,739,820 shares of common stock were reserved for issuance. As of December 31, 2018, options to purchase approximately 290,000 shares of common stock and RSUs covering approximately 3,119,000 shares of common stock were outstanding under the 2011 Plan.

No further awards will be made under our Amended and Restated 2001 Stock Incentive Plan, and it will be terminated. Options outstanding under the 2001 Plan will continue to be governed by their existing terms. As of December 31, 2018, options to purchase approximately 14,000 shares of common stock were outstanding under the 2001 Plan.

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 17. Stock incentive plans (Continued)

The following table summarizes our stock-based compensation expense included in the consolidated statements of operations for 2018, 2017 and 2016:

	Year Ended December 31,						
		2018		2017		2016	
Network operations	\$	2,070	\$	2,174	\$	2,144	
Development and technology		1,242		1,068		1,070	
Selling and marketing		1,868		2,060		1,842	
General and administrative		7,088		8,913		7,749	
Total stock-based compensation expense	\$	12,268	\$	14,215	\$	12,805	

For the years ended December 31, 2018, 2017, and 2016, we capitalized \$789, \$696, and \$727, respectively, of stock-based compensation expense to software and capital projects.

# Stock option awards

We grant stock option awards to both employees and non-employee directors. The grant date for these awards is the same as the measurement date. The stock option awards generally vest over a four-year service period with 25% vesting when the individual completes 12 months of continuous service and the remaining 75% vesting monthly thereafter. These awards are valued as of the measurement date and the stock-based compensation expense, net of forfeitures, is recognized on a straight-line basis over the requisite service period. A summary of the activity for stock option awards for 2018 is presented below:

	Number of Options (000's)	ions Exercise		Weighted-Average Remaining Contract Life (years)	ggregate ntrinsic Value
Outstanding at December 31, 2017	1,283	\$	9.58	3.8	\$ 16,573
Exercised	(972)	\$	10.26		
Canceled/forfeited	(7)	\$	5.99		
Outstanding and exercisable at December 31, 2018	304	\$	7.49	3.8	\$ 3,970

The aggregate intrinsic value in the table above represents the difference between the estimated fair value of our common stock at December 31, 2018 and the option exercise price, multiplied by the number of in-the-money options at December 31, 2018. The intrinsic value changes are based on the estimated fair value of our common stock.

Stock options to purchase approximately 972,000, 1,776,000 and 532,000 shares of our common stock were exercised during the years ended December 31, 2018, 2017 and 2016 for cash proceeds of \$9,979, \$9,244 and \$2,984, respectively. The total intrinsic value of stock options exercised for the years ended December 31, 2018, 2017 and 2016 was \$14,935, \$20,551 and \$1,675, respectively.

### **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

# 17. Stock incentive plans (Continued)

#### Restricted stock unit awards

We grant time-based restricted stock units ("RSUs") to executive and non-executive personnel and non-employee directors. The time-based RSUs granted to executive and non-executive personnel generally vest over a three-year period subject to continuous service on each vesting date. The time-based RSUs for our non-employee directors generally vest over a one-year period for existing members and 33.3% per year over a three-year period for new members subject to continuous service on each vesting date.

We grant performance-based RSUs to executive personnel. These awards vest subject to certain performance objectives based on the Company's revenue growth and/or Adjusted EBITDA growth achieved during the specified performance period and certain long-term service conditions. The maximum number of RSUs that may vest is determined based on actual Company achievement and performance-based RSUs generally vest over a three-year period subject to continuous service on each vesting date.

In 2016, our Compensation Committee determined to adjust its practice of making annual long-term equity grants and instead adopted a compensation cycle whereby it granted equity awards to our Chief Executive Officer and Chief Financial Officer covering the number of shares it might otherwise have granted in 2016 through 2018, with "cliff" vesting dates in 2019. These grants were made to focus our Chief Executive Officer and Chief Financial Officer on the Company's overall long-term corporate and strategic goals, eliminate intervening quarterly vesting dates that force them to sell shares in the market to cover taxes triggered upon vesting, and strengthen the Company's ability to retain our senior management team over the next three years. As a result of these larger-than-usual RSU grants, the Compensation Committee does not intend to grant additional equity awards to our Chief Executive Officer and Chief Financial Officer until 2019.

A summary of the RSU activity in 2018 is as follows:

	Number of Shares (000's)	Ave Gran	ghted erage it Date Value
Non-vested at December 31, 2017	3,324	\$	7.35
Granted(2)	978	\$	13.73
Vested	(1,113)	\$	8.99
Canceled/forfeited	(70)	\$	14.98
Non-vested at December 31, 2018	3,119	\$	8.60

The RSUs granted to all of our named executive officers in 2016 were subject to satisfaction of specified service-based and performance-based conditions. The performance objectives were subject to under- or over- achievement on a sliding scale, with a threshold of 50% of the target number of RSUs and a maximum of 150% of the target RSUs. In February 2018, our Compensation Committee determined actual achievement of the 2016 performance-based RSUs resulting in additional RSUs granted

# **Notes to the Consolidated Financial Statements (Continued)**

(In thousands, except shares and per share amounts)

### 17. Stock incentive plans (Continued)

of approximately 584,000 at a grant-date fair value of \$6.13 per share during the year ended December 31, 2018.

During the year ended December 31, 2018, 1,112,938 shares of RSUs vested. The Company issued 702,447 shares and the remaining shares were withheld to pay minimum statutory federal, state, and local employment payroll taxes on those vested awards.

At December 31, 2018, the total remaining stock-based compensation expense for unvested RSU awards is \$9,314, which is expected to be recognized over a weighted average period of 2.6 years.

# 18. Employee benefit plan

We have a defined contribution savings plan in accordance with Section 401(k) of the Internal Revenue Code. This plan covers substantially all employees who meet the IRS requirements and allows participants to contribute a portion of their annual compensation on a pre-tax basis. The Company's matching contributions are paid each pay period and employees are immediately vested in all of the Company's matching contributions regardless of the employee's length of service with the Company. Employer contributions of \$1,154, \$891 and \$819 were made to the plan by us in 2018, 2017 and 2016, respectively.

# 19. Net loss per share attributable to common stockholders

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders:

	Year Ended December 31,					
		2018	2017(3)			2016(3)
			(in	thousands)		
Numerator:						
Net loss attributable to common stockholders,						
basic and diluted	\$	(1,220)	\$	(19,366)	\$	(27,331)
Denominator:						
Weighted average number of common stock, basic and diluted		42,066		39,824		38,025
Net loss per share attributable to common						
stockholders:						
Basic and diluted	\$	(0.03)	\$	(0.49)	\$	(0.72)

(3) As noted above, prior period amounts have not been adjusted upon adoption of ASC 606 under the modified retrospective method.

For the years ended December 31, 2018, 2017 and 2016, we excluded all assumed exercises of stock options and the assumed issuance of common stock under RSUs from the computation of diluted net loss per share as the effect would be anti-dilutive due to the net loss for the period. For the year ended December 31, 2018, we also excluded the shares that would be issuable assuming conversion of all of the Convertible Notes given our intent to settle in cash as well as the shares for the capped call as the effect would be anti-dilutive.

# Notes to the Consolidated Financial Statements (Continued)

(In thousands, except shares and per share amounts)

### 20. Quarterly financial data (unaudited)

Summarized unaudited quarterly financial data for fiscal years 2018 and 2017 are as follows:

	Quarter Ended							
2018	N	Iarch 31		June 30	ine 30 September 30			ecember 31
Revenue	\$	58,159	\$	59,601	\$	65,253	\$	67,808
(Loss) income from operations	\$	(2,566)	\$	2,576	\$	150	\$	(3,157)
Net (loss) income attributable to								
common stockholders	\$	(3,229)	\$	2,115	\$	(522)	\$	416
Basic and diluted (loss) income								
per share	\$	(0.08)	\$	0.05	\$	(0.01)	\$	0.01

		Quarter Ended								
2017	N	Iarch 31	1 31 June 30 S			eptember 30	D	ecember 31		
Revenue	\$	44,333	\$	49,033	\$	53,655	\$	57,348		
Loss from operations	\$	(6,578)	\$	(7,670)	\$	(2,989)	\$	(3,464)		
Net loss attributable to common										
stockholders	\$	(6,880)	\$	(8,017)	\$	(3,450)	\$	(1,019)		
Basic and diluted loss per share	\$	(0.18)	\$	(0.20)	\$	(0.09)	\$	(0.02)		

Losses per share are computed separately for each quarter and the full year using the respective weighted average number of shares. Therefore, the sum of the quarterly losses per share amounts may not equal the annual amounts reported.

# 21. Subsequent events

# **Equity Incentive Plan**

In February 2019, we granted approximately 93,000 time-based RSUs to certain executive officers that vest periodically over three years of continuous service and approximately 80,000 performance-based RSUs (assuming at-target achievement) that cliff-vest upon achievement of performance objectives through December 31, 2021. We also granted approximately 205,000 time-based RSUs to non-executive personnel that will vest quarterly over three years of continuous service.

The grants were made pursuant to our 2011 Plan.

### **SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 1<sup>st</sup> day of March 2019.

### **BOINGO WIRELESS, INC.**

/s/ DAVID HAGAN

David Hagan

Chief Executive Officer and Chairman of the

Board

# POWER OF ATTORNEY

By:

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David Hagan and Peter Hovenier, and each of them, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ DAVID HAGAN  David Hagan	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	March 1, 2019
/s/ PETER HOVENIER  Peter Hovenier	Chief Financial Officer (Principal Financial and Accounting Officer)	March 1, 2019
/s/ MAURY AUSTIN  Maury Austin	Director	March 1, 2019
/s/ MICHELE CHOKA  Michele Choka	Director	March 1, 2019
/s/ CHUCK DAVIS Chuck Davis	Director	March 1, 2019

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/s/ MICHAEL FINLEY	Director	March 1, 2019
Michael Finley	Director	Water 1, 2017
/s/ TERRELL JONES	Director	March 1, 2019
Terrell Jones	Birector	Wiaicii 1, 2019
/s/ KATHY MISUNAS	Director	March 1, 2019
Kathy Misunas	Birector	Match 1, 2019
/s/ LANCE ROSENZWEIG	Γ'	M 1 1 2010
Lance Rosenzweig	Director	March 1, 2019

# **Section 2: EX-10.32 (EX-10.32)**

**Exhibit 10.32** 

**EXECUTION VERSION** 

# CONFIDENTIAL TREATMENT REQUESTED

Published CUSIP Numbers: Deal: 09738TAA4 Revolver: 09738TAB2 Term Loan: 09738TAC0

# **CREDIT AGREEMENT**

Dated as of February 26, 2019

among

# **BOINGO WIRELESS, INC.**

and

# NEW YORK TELECOM PARTNERS, LLC,

as the Borrowers,

# CERTAIN DOMESTIC SUBSIDIARIES OF BOINGO WIRELESS, INC.,

as the Guarantors,

# BANK OF AMERICA, N.A.,

as Administrative Agent, Swing Line Lender and an L/C Issuer,

# SILICON VALLEY BANK,

as Syndication Agent,

and

# THE OTHER LENDERS PARTY HERETO

# MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

as Sole Lead Arranger and Sole Bookrunner

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\*CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

### **CREDIT AGREEMENT**

This CREDIT AGREEMENT is entered into as of February 26, 2019 among BOINGO WIRELESS, INC., a Delaware corporation (the "Company"), New York Telecom Partners, LLC, a Delaware limited liability company ("NY Telecom" and together with the Company, each a "Borrower" and collectively, the "Borrowers"), the Guarantors (as defined below), the Lenders (as defined below) and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and an L/C Issuer.

The Borrowers have requested that the Lenders provide (a) a \$150,000,000 revolving credit facility to the Company and (b) a \$3,500,000 term loan facility to NY Telecom, in each case, for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

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

# **ARTICLE I**

# **DEFINITIONS AND ACCOUNTING TERMS**

# 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"1.00% Convertible Notes" means those certain 1.00% convertible senior notes of the Company due October 1, 2023 in an initial aggregate principal amount of \$201,250,000 issued pursuant to the 1.00% Convertible Notes Indenture.

"1.00% Convertible Notes Documents" means the 1.00% Convertible Notes, the 1.00% Convertible Notes Indenture and all other

certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of the Company, pursuant to the foregoing.

"1.00% Convertible Notes Indenture" means the indenture dated as of October 5, 2018 between the Company and Wilmington Trust, National Association, as trustee.

"2019 Restricted Stock Unit Settlement" means any cash settlement by the Company during the fiscal year ending December 31, 2019 of restricted stock units issued to employees of the Company; provided, that, the aggregate amount of all such 2019 Restricted Stock Unit Settlements shall not exceed \$37,500,000.

"Acquisition" means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of (a) all or any substantial portion of the property of another Person, or any division, line of business or other business unit of another Person or (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

- "Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02 or such other address or account as the Administrative Agent may from time to time notify the Company and the Lenders.
  - "Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.
- "Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.
- "Aggregate Revolving Commitments" means the Revolving Commitments of all the Lenders. The aggregate principal amount of the Aggregate Revolving Commitments in effect on the Closing Date is ONE HUNDRED FIFTY MILLION DOLLARS (\$150,000,000).
  - "Agreement" means this Credit Agreement.
- "<u>Alternative Currency</u>" means, with respect to Letters of Credit, each of Euro and each other currency (other than Dollars) that is approved in accordance with Section 1.08; provided, that, for each Alternative Currency, such requested currency is an Eligible Currency.
- "Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the applicable L/C Issuer at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.
- "Applicable Percentage" means, with respect to any Lender at any time, (a) with respect to such Lender's Revolving Commitment at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender's Revolving Commitment at such time, subject to adjustment as provided in Section 2.15; provided, that, if the commitment of each Lender to make Revolving Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 9.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments and (b) with respect to such Lender's portion of the outstanding Term Loan at any time, the percentage (carried out to the ninth decimal place) of the outstanding principal amount of the Term Loan held by such Lender at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or other agreement pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, with respect to Revolving Loans, the Term Loan, Swing Line Loans, Letters of Credit and the Commitment Fee, the following percentages per annum, based upon the Consolidated Total Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 7.02(b):

Pricing Tier	Consolidated Total Leverage Ratio	Commitment Fee	Letter of Credit Fee	Eurodollar Rate Loans	Base Rate Loans
1	> 3.50 to 1.0	0.500%	2.75%	2.75%	1.75%

Pricing Tier	Consolidated Total Leverage Ratio	Commitment Fee	Letter of Credit Fee	Eurodollar Rate Loans	Base Rate Loans
2	$\leq 3.50 \text{ to } 1.0 \text{ but} $ > 2.75 to 1.0		2.25%	2.25%	1.25%
3	≤ 2.75 to 1.0	0.250%	1.75%	1.75%	0.75%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Total Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 7.02(b); provided, that, if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Tier 1 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall continue to apply until the first Business Day immediately following the date a Compliance Certificate is delivered in accordance with Section 7.02(b), whereupon the Applicable Rate shall be adjusted based upon the calculation of the Consolidated Total Leverage Ratio contained in such Compliance Certificate. Subject to the proviso in the immediately preceding sentence, the Applicable Rate in effect from the Closing Date to the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 7.02(b) for the fiscal year ending December 31, 2018 shall be determined based upon Pricing Tier 3. Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

"Applicable Time" means, with respect to any payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the applicable L/C Issuer to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

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

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit H or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease of any Person, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease and (c) in respect of any Securitization Transaction of any Person, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment.

"<u>Audited Financial Statements</u>" means the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended December 31, 2017, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year of the Company and its

Subsidiaries, including the notes thereto, audited by independent public accountants of recognized national standing and prepared in conformity with GAAP.

"Availability Period" means the period from and including the first Business Day following the date on which Initial Budgets for all NY MTA Projects have been delivered pursuant to Section 7.02(j), to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 9.02.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"<u>Bail-In Legislation</u>" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank of America" means Bank of America, N.A. and its successors.

"Bank of America Fee Letter" means that certain fee letter agreement, dated as of October 31, 2018 among the Company, Bank of America and MLPFS.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate <u>plus</u> 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) the Eurodollar Rate <u>plus</u> 1.00%; <u>provided</u>, <u>that</u>, if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the "prime rate" announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

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

"Borrower" and "Borrowers" have the meaning specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 7.02.

"<u>Borrowing</u>" means each of the following: (a) a borrowing of Swing Line Loans pursuant to <u>Section 2.04</u> and (b) a borrowing consisting of simultaneous Loans of the same Type and, in the case of

Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to <u>Section 2.01</u>.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

"Businesses" means, at any time, a collective reference to the businesses operated by the Company and its Subsidiaries at such time.

"<u>Capital Lease</u>" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"Capped Call Transactions" means one or more capped call options (or substantively equivalent derivative transaction) referencing the Company's Equity Interests and purchased by the Company in connection with the issuance of Convertible Bond Indebtedness with a strike or exercise price (howsoever defined) initially equal to the conversion price (howsoever defined) of the related Convertible Bond Indebtedness (subject to rounding); provided, that, the purchase price for any such Capped Call Transaction shall not exceed the net proceeds received by the Company from the issuance of such Convertible Bond Indebtedness in connection with such Capped Call Transaction.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuers or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer benefiting from such collateral shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the applicable L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means, as at any date, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided, that, the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve (12) months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank being an "Approved Bank"), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six (6) months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940 which are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing clauses (a) through (d).

"Cash on Hand" means, as of any date of determination, the sum (without duplication) of (a) cash generated from the Company and its Subsidiaries' operations and not representing the proceeds of any Indebtedness of the Company or any Subsidiary (other than, for the avoidance of doubt, proceeds from the issuance of the 1.00% Convertible Notes, as described in clause (c) below) plus (b) cash representing the proceeds of any issuance of any Equity Interests of the Company plus (c) cash representing the proceeds from the issuance of the 1.00% Convertible Notes, in each case, that is unrestricted and held in accounts of the Loan Parties or in the possession of the Loan Parties on such date.

"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 or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

### "Change of Control" means the occurrence of any of the following events:

- any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Company entitled to vote for members of the board of directors or equivalent governing body of the Company on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or
- (b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Company cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in <u>clause (i)</u> above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in <u>clauses (i)</u> and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or
- (c) the Company shall cease to own and control, of record and beneficially, directly or indirectly, 100% of the outstanding economic and voting Equity Interests of NY Telecom.

"Closing Date" means the date hereof.

- "Collateral" means a collective reference to all personal property with respect to which Liens in favor of the Administrative Agent, for the benefit of the holders of the Obligations, are purported to be granted pursuant to and in accordance with the terms of the Collateral Documents.
- "Collateral Documents" means a collective reference to the Security Agreement, the Pledge Agreement and other security documents as may be executed and delivered by the Loan Parties pursuant to the terms of Section 7.14 or any of the Loan Documents.
- "Commitment" means, as to each Lender, the Revolving Commitment of such Lender and the Term Loan Commitment of such Lender.
  - "Commitment Fee" has the meaning specified in Section 2.09(a).
- "Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) as amended or otherwise modified, and any successor statute.
  - "Company" has the meaning specified in the introductory paragraph hereto.
  - "Compliance Certificate" means a certificate substantially in the form of Exhibit F.
  - "Concourse Chicago" means Chicago Concourse Development Group, LLC, a Delaware limited liability company.
  - "Concourse Detroit" means Concourse Communications Detroit, LLC, a Delaware limited liability company.
- "Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.
- "Consolidated Capital Expenditures" means, for any period, for the Company and its Subsidiaries on a consolidated basis, all capital expenditures, as determined in accordance with GAAP; provided, that, Consolidated Capital Expenditures shall not include (a) expenditures made with proceeds of any Involuntary Disposition to the extent such expenditures are used to purchase property that is the same as or similar to the property subject to such Involuntary Disposition or (b) Permitted Acquisitions.
- "Consolidated Cash Taxes" means, for any period, for the Company and its Subsidiaries on a consolidated basis, the aggregate of all taxes, as determined in accordance with GAAP, to the extent the same are paid in cash during such period.
- "Consolidated EBITDA" means, for any period, for the Company and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period <u>plus</u> (a) the following (without duplication) to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for federal, state, local and foreign income taxes payable by the Company and its Subsidiaries for such period, (iii) depreciation and amortization expense for such period, (iv) any non-cash stock-based compensation expense for such period, (v) any other non-cash charges, expenses or losses for such period (excluding write-downs of accounts receivable and any other non-cash charges, expenses or losses to the extent representing accruals of or reserves for cash items in any future period or an amortization of a prepaid cash expense), (vi) any cash charges for such period that are infrequent and unusual; <u>provided</u>, <u>that</u>, the aggregate amount added pursuant to this <u>clause (vi)</u> shall not exceed ten percent (10%) of Consolidated EBITDA (determined prior to giving effect to the add-back in this <u>clause (vi)</u> for such period and (vii) non-recurring transaction fees and expenses for such period in

connection with Convertible Bond Indebtedness incurred in reliance on Section 8.03(n), all as determined in accordance with GAAP, minus (b) the following (without duplication) to the extent included in calculating such Consolidated Net Income: (i) all non-cash income or gains for such period, (ii) federal, state, local and foreign income tax credits of the Company and its Subsidiaries during such period and (iii) cash gains for such period that are infrequent and unusual. To the extent included in Consolidated Net Income, any non-cash gains or losses from the mark-to-market of Swap Contracts shall be excluded from the calculation of Consolidated EBITDA.

"Consolidated Fixed Charge Coverage Ratio" means, as of any date of determination, the ratio of (a) the total of (i) Consolidated EBITDA for the period of the four fiscal quarters most recently ended minus (ii) Consolidated Cash Taxes for such period minus (iii) an amount equal to the lesser of (A) Consolidated Capital Expenditures for such period and (B) three percent (3%) of Consolidated Revenues for such period to (b) Consolidated Fixed Charges for the period of the four fiscal quarters most recently ended.

"Consolidated Fixed Charges" means, for any period, for the Company and its Subsidiaries on a consolidated basis, an amount equal to the sum of (a) the cash portion of Consolidated Interest Charges for such period <u>plus</u> (b) Consolidated Scheduled Funded Debt Payments for such period <u>plus</u> (c) the amount of cash Restricted Payments made by the Loan Parties during such period (other than the aggregate amount of all 2019 Restricted Stock Unit Settlements made during such period). Notwithstanding the foregoing, for any calculation of Consolidated Fixed Charges occurring prior to the one-year anniversary of the Closing Date, actual cash Consolidated Interest Charges from the Closing Date through the applicable fiscal quarter end shall be annualized for purposes of calculating the cash portion of Consolidated Interest Charges for the relevant calculation period of four fiscal quarters.

"Consolidated Funded Indebtedness" means Funded Indebtedness of the Company and its Subsidiaries on a consolidated basis determined in accordance with GAAP.

"Consolidated Interest Charges" means, for any period, for the Company and its Subsidiaries on a consolidated basis, an amount equal to the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, <u>plus</u> (b) the portion of rent expense with respect to such period under Capital Leases that is treated as interest in accordance with GAAP <u>plus</u> (c) the implied interest component of Synthetic Leases with respect to such period.

"Consolidated Net Income" means, for any period, for the Company and its Subsidiaries on a consolidated basis, the net income of the Company and its Subsidiaries for that period (excluding (a) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that the Company's equity in any net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income and (b) any income (or loss) for such period of any Person if such Person is not the Company or a Subsidiary, except that the Company's equity in the net income of any such Person for such period shall be included in Consolidated Net Income up to the amount of cash actually distributed by such Person during such period to the Company or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Company as described in clause (a) hereof)), as determined in accordance with GAAP.

"Consolidated Revenues" means, for any period, for the Company and its Subsidiaries on a consolidated basis, total revenues as determined in accordance with GAAP.

"Consolidated Scheduled Funded Debt Payments" means for any period for the Company and its Subsidiaries on a consolidated basis, the sum of all scheduled payments of principal on Consolidated Funded Indebtedness, as determined in accordance with GAAP. For purposes of this definition, "scheduled payments of principal" (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period, (b) shall be deemed to include the Attributable Indebtedness in respect of Capital Leases, Securitization Transactions and Synthetic Leases and (c) shall not include any voluntary prepayments or mandatory prepayments required pursuant to Section 2.05.

"Consolidated Senior Secured Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness that is secured by a Lien on any property of the Company or any Subsidiary (other than any Consolidated Funded Indebtedness that is contractually subordinated in right of payment to the Obligations) as of such date  $\underline{to}$  (b) Consolidated EBITDA for the period of the four fiscal quarters most recently ended.

"Consolidated Total Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the period of the four fiscal quarters most recently ended.

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Convertible Bond Indebtedness" means Indebtedness (including, for the avoidance of doubt, the 1.00% Convertible Notes) having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into, or by reference to, Equity Interests of the Company.

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

"<u>Debtor Relief Laws</u>" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"<u>Default</u>" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"<u>Default Rate</u>" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate <u>plus</u> (ii) the Applicable Rate, if any, applicable to Base Rate Loans <u>plus</u> (iii) 2% per annum; <u>provided</u>, <u>that</u>, with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan

<u>plus</u> 2% per annum, in each case to the fullest extent permitted by applicable Laws and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, an L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Company, the Administrative Agent, an L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder (provided, that, such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interests in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Company, the L/C Issuers, the Swing Line Lender and each other Lender promptly following such determination.

"<u>Delaware Divided LLC</u>" means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"<u>Delaware LLC Division</u>" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Account Control Agreement" means any account control agreement by and among a Loan Party, the applicable depository bank (or securities intermediary, as the case may be) and the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent.

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"<u>Dispose</u>" means the sale, transfer, license, lease or other disposition to any Person (including any Sale and Leaseback Transaction) of any property by any Loan Party or any Subsidiary (including the Equity Interests of any Subsidiary), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division, but excluding: (a) the sale, lease, license, transfer or other disposition of inventory in the ordinary course of business, (b) the sale, lease, license, transfer or other disposition in the ordinary course of business of surplus, obsolete or worn out property no longer used or useful in the conduct of business (in each case, as determined in the good faith judgment of the Company) of any Loan Party and its Subsidiaries, (c) any sale, lease, license, transfer or other disposition of property to any Loan Party or any Subsidiary; provided, that, if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party or (ii) to the extent such transaction constitutes an Investment, such transaction is permitted under <u>Section 8.02</u>, and (d) any Involuntary Disposition.

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

"<u>Dollar Equivalent</u>" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the applicable L/C Issuer at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"<u>Domestic Subsidiary</u>" means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia.

"Earn Out Obligations" means, with respect to an Acquisition, all obligations of the Company or any Subsidiary to make earn out or other contingency payments (including purchase price adjustments, non-competition and consulting agreements, or other indemnity obligations) pursuant to the documentation relating to such Acquisition. For purposes of determining the aggregate consideration paid for an Acquisition at the time of such Acquisition, the amount of any Earn Out Obligations shall be deemed to be the maximum amount of the earn-out payments in respect thereof as specified in the documents relating to such Acquisition. For purposes of determining the amount of any Earn Out Obligations to be included in the definition of Funded Indebtedness, the amount of Earn Out Obligations shall be deemed to be the aggregate liability in respect thereof, as determined in accordance with GAAP.

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

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"Elauwit Acquisition" means the Acquisition by the Company or a Subsidiary of certain specified assets of Elauwit Networks, LLC, pursuant to, and as more particularly described in, the Elauwit

Acquisition Agreement, in exchange for the "Purchase Price" defined in the Elauwit Acquisition Agreement.

"Elauwit Acquisition Agreement" means that certain Asset Purchase Agreement dated as of August 1, 2018, among the Company, Boingo MDU, LLC, a Delaware limited liability company, Elauwit Networks, LLC and certain affiliates of Elauwit Networks, LLC, together with all exhibits and schedules thereto.

"Elauwit Acquisition Documents" means the Elauwit Acquisition Agreement and all other agreements, instruments and documents executed and delivered in connection with the Elauwit Acquisition Agreement.

"<u>Elauwit Earn Out Obligations</u>" means all obligations of the Company or any Subsidiary to make the "Earnout Payments" (as defined in the Elauwit Acquisition Agreement).

"Elauwit Holdback" means the remaining payment obligations of the Company or any Subsidiary owed to "Seller" (as defined in the Elauwit Acquisition Agreement) pursuant to the Elauwit Acquisition Agreement in respect of the "Indemnification Holdback Amount" and "Consent Pro-Rata Amounts" (each as defined in the Elauwit Acquisition Agreement).

"<u>Eligible Assignee</u>" means any Person that meets the requirements to be an assignee under <u>Section 11.06(b)(iii)</u> and <u>(v)</u> (subject to such consents, if any, as may be required under <u>Section 11.06(b)(iii)</u>) or for purposes of an assignment permitted pursuant to <u>Section 10.09</u>, any acquisition vehicle formed pursuant to <u>Section 10.09</u> in connection with any credit bid.

"<u>Eligible Currency</u>" means any lawful currency other than Dollars that is readily available, freely transferable and convertible into Dollars in the international interbank market available to the L/C Issuers in such market and as to which a Dollar Equivalent may be readily calculated. If, after the designation by the L/C Issuers of any currency as an Alternative Currency, any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions are imposed in the country in which such currency is issued, results in, in the reasonable opinion of an L/C Issuer, (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (b) a Dollar Equivalent no longer being readily calculable with respect to such currency, (c) the provision for such currency becoming impracticable for such L/C Issuer or (d) such currency no longer being one in which such L/C Issuer is willing to make such Credit Extensions (each of the foregoing clauses (a), (b), (c), and (d), a "Disqualifying Event"), then the Administrative Agent shall promptly notify the Company, and such country's currency shall no longer be an Alternative Currency until such time as the Disqualifying Event(s) no longer exist.

"Environmental Laws" means any and all federal, state, local, foreign and other applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened

release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination. Notwithstanding the foregoing, "Equity Interests" shall not include any Convertible Bond Indebtedness or any Capped Call Transaction.

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate.

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

"Euro" and "€" mean the single currency of the Participating Member States.

# "Eurodollar Rate" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate ("<u>LIBOR</u>") or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "<u>LIBOR Rate</u>") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at approximately 11:00 a.m., London time, determined two (2) Business Days prior to such date for Dollar deposits with a term of one (1) month commencing that date;

provided, that, (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied to the applicable Interest Period in a manner consistent with market practice (provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied to the applicable Interest Period as otherwise reasonably determined by the Administrative Agent) and (ii) if the Eurodollar Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Eurodollar Rate Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "Eurodollar Rate".

"Event of Default" has the meaning specified in Section 9.01.

"Excluded Accounts" means those deposit and operating accounts of the Loan Parties set forth on Schedule 7.15.

"Excluded Property" means, with respect to any Loan Party, including any Person that becomes a Loan Party after the Closing Date as contemplated by Section 7.12, (a) any owned or leased real property, (b) any owned or leased personal property which is located outside of the United States unless requested by the Administrative Agent or the Required Lenders, (c) any personal property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not either (i) governed by the Uniform Commercial Code or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, unless requested by the Administrative Agent or the Required Lenders, (d) the Equity Interests of any direct Foreign Subsidiary of a Loan Party to the extent not required to be pledged to secure the Obligations pursuant to Section 7.14(a), (e) any property which, subject to the terms of Section 8.09, is subject to a Lien of the type described in Section 8.01(i) pursuant to documents which prohibit such Loan Party from granting any other Liens in such property and (f) any assets as to which the Administrative Agent and the Company agree in writing that the cost of obtaining or perfecting a security interest in such assets is excessive in relation to the value of such assets as Collateral.

"Excluded Subsidiary" means Concourse Detroit; provided, that, Concourse Detroit shall cease to be an "Excluded Subsidiary" on any date that, for the period of four consecutive fiscal quarters of the Company most recently ended prior to such date, Concourse Detroit generates any revenue or otherwise has any portion of Consolidated Revenues attributable to it.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 4.08 hereof and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the Guaranty of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or security interest becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Company under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that pursuant to Section 3.01(a)(ii), (a) (iii) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding taxes imposed under FATCA.

"Existing Letters of Credit" means the letters of credit described by date of issuance, letter of credit number, undrawn amount, name of beneficiary and date of expiry on Schedule 1.01.

"<u>Facilities</u>" means, at any time, a collective reference to the facilities and real properties owned, leased or operated by any Loan Party or any Subsidiary and the facilities and properties where any Loan Party or any Subsidiary has licensed the right to use property in the ordinary course of its business.

"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), 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.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent and (c) if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Fee Letters" means (a) the Bank of America Fee Letter and (b) the SVB Fee Letter.

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

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

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

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to an L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations in respect of Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

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

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

- (a) all obligations, whether current or long-term, for borrowed money (including the Obligations) and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
  - (b) all purchase money Indebtedness;
- (c) the principal portion of all obligations under conditional sale or other title retention agreements relating to property purchased by such Person or any Subsidiary thereof (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);
- (d) all obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (e) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than ninety (90) days after the date on which such trade account payable was created (unless subject to a bona fide dispute)), including, without limitation, any Earn Out Obligations (including, for the avoidance of doubt, the Elauwit Earn Out Obligations);
- (f) the Attributable Indebtedness of such Person in respect of Capital Leases, Securitization Transactions and Synthetic Leases;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
- (h) all Funded Indebtedness of others secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;
- (i) all Guarantees with respect to Funded Indebtedness of the types specified in <u>clauses (a)</u> through <u>(h)</u> above of another Person; and

(j) all Funded Indebtedness of the types referred to in <u>clauses (a)</u> through <u>(i)</u> above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that such Funded Indebtedness is expressly made non-recourse to such Person.

For purposes hereof, the amount of any direct obligation arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

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

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

"Guarantors" means (a) each Domestic Subsidiary identified as a "Guarantor" on the signature pages hereto, (b) each other Person that joins as a Guarantor pursuant to Section 7.12, (c) with respect to (i) Obligations under any Secured Swap Agreement, (ii) Obligations under any Secured Treasury Management Agreement and (iii) any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 4.01 and 4.08) under the Guaranty, each Borrower and (d) the successors and permitted assigns of the foregoing; provided, that, it is understood and agreed that Concourse Detroit shall not be required to become a "Guarantor" hereunder until such time as it no longer satisfies the condition set forth in the definition of "Excluded Subsidiary".

"Guaranty" means the Guaranty made by the Guarantors in favor of the Administrative Agent, the Lenders and the other holders of the Obligations pursuant to Article IV.

"<u>Hazardous Materials</u>" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Honor Date" has the meaning set forth in Section 2.03(c).

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

"Impacted Loans" has the meaning specified in Section 3.03.

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

- (a) all Funded Indebtedness;
- (b) the Swap Termination Value of any Swap Contract;
- (c) all Guarantees with respect to outstanding Indebtedness of the types specified in <u>clauses (a)</u> and <u>(b)</u> above of any other Person; and
- (d) all Indebtedness of the types referred to in <u>clauses (a)</u> through <u>(c)</u> above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person or a Subsidiary thereof is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person or such Subsidiary.

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

"Indemnitees" has the meaning specified in Section 11.04(b).

"Information" has the meaning specified in Section 11.07.

"Initial Budget" has the meaning set forth in Section 7.02(j).

"Interest Payment Date" means (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, that, that if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months thereafter (in each case, subject to availability), as selected by the applicable Borrower in its Loan Notice; provided, that:

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (b) any Interest Period pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
  - (c) no Interest Period with respect to any Loan shall extend beyond the Maturity Date.

"Interim Financial Statements" means the unaudited consolidated financial statements of the Company and its Subsidiaries for the fiscal quarter ended September 30, 2018, including balance sheets and statements of income or operations, stockholders' equity and cash flows.

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

"Internal Revenue Service" means the United States Internal Revenue Service.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Involuntary Disposition" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any of its Subsidiaries.

"IP Rights" has the meaning specified in Section 6.17.

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

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

"Joinder Agreement" means a joinder agreement substantially in the form of  $\underline{\text{Exhibit }G}$  executed and delivered by a Domestic Subsidiary in accordance with the provisions of  $\underline{\text{Section }7.12}$ .

" $\underline{L/C\ Advance}$ " means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

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

"<u>L/C Commitment</u>" means, as to each L/C Issuer, its obligation to issue Letters of Credit pursuant to <u>Section 2.03</u> in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such L/C Issuer's name on <u>Schedule 2.03</u>, as such amount may be adjusted from time to time in accordance with this Agreement.

"<u>L/C Credit Extension</u>" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means (a) Bank of America in its capacity as an issuer of Letters of Credit hereunder (including as the issuer of Existing Letters of Credits issued by it), (b) Silicon Valley Bank, in its capacity as an issuer of Letters of Credit hereunder (including as the issuer of Existing Letters of Credits issued by it), or (c) any successor issuer of Letters of Credit hereunder. All singular references to the L/C Issuer shall mean any L/C Issuer, either L/C Issuer, the L/C Issuer that has issued the applicable Letter of Credit or all L/C Issuers, as the context may require.

"<u>L/C Obligations</u>" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit <u>plus</u> the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with <u>Section 1.06</u>. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

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

"<u>Lenders</u>" means each of the Persons identified as a "Lender" on the signature pages hereto, each Person that executes a lender joinder agreement or commitment agreement in accordance with <u>Section 2.02(f)</u> and their respective successors and assigns and, as the context requires, includes the Swing Line Lender.

"<u>Lending Office</u>" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Administrative Agent.

"<u>Letter of Credit</u>" means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

"<u>Letter of Credit Application</u>" means an application and agreement for the issuance or amendment of a letter of credit in the form from time to time in use by the applicable L/C Issuer.

"Letter of Credit Expiration Date" means the day that is seven (7) days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(h).

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"<u>Letter of Credit Report</u>" means a certificate substantially in the form of <u>Exhibit L</u> or any other form approved by the Administrative Agent.

"<u>Letter of Credit Sublimit</u>" means an amount equal to the lesser of (a) the Aggregate Revolving Commitments and (b) \$60,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"LIBOR" has the meaning specified in the definition of "Eurodollar Rate".

"LIBOR Rate" has the meaning specified in the definition of "Eurodollar Rate".

"<u>LIBOR Screen Rate</u>" means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"LIBOR Successor Rate" has the meaning specified in Section 3.08.

"LIBOR Successor Rate Conforming Changes" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines in consultation with the Borrowers).

"<u>Lien</u>" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Liquidity" means, as of any date of determination, an amount equal to (a) unrestricted cash and Cash Equivalents of the Loan Parties at such date that would be set forth on a consolidating balance sheet of the Company and its Subsidiaries for such date <u>plus</u> (b) availability under the Aggregate Revolving Commitments as of such date, solely to the extent that if such availability was to be drawn by the Company at such time, the Loan Parties, upon giving Pro Forma Effect to the incurrence of such Indebtedness, would be in compliance with the financial covenants set forth in <u>Sections 8.11(a)</u> and (b) as of the most recent fiscal quarter for which the Company was required to deliver financial statements pursuant to <u>Section 7.01(a)</u> or (b), as certified to the Administrative Agent by the Company in a certificate in form and substance reasonably satisfactory to the Administrative Agent.

"Loan" means an extension of credit by a Lender to a Borrower under Article II in the form of a Revolving Loan, Swing Line Loan or Term Loan.

"<u>Loan Documents</u>" means this Agreement, each Note, each Issuer Document, each Joinder Agreement, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of <u>Section 2.14</u> of this Agreement, each Collateral Document, each Fee Letter and any other agreement,

instrument or document designated by its terms as a "Loan Document" (but specifically excluding Secured Swap Agreements and Secured Treasury Management Agreements).

"Loan Notice" means a notice of (a) a Borrowing of Loans, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, in each case pursuant to  $\underline{Section 2.02(a)}$ , which, if in writing, shall be substantially in the form of  $\underline{Exhibit A}$  or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) appropriately completed and signed by a Responsible Officer of the applicable Borrower.

"Loan Parties" means, collectively, each Borrower and each Guarantor.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Master Agreement" has the meaning specified in the definition of "Swap Contract".

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Company and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document; (c) a material impairment of the ability of any Loan Party to perform its material obligations under any Loan Document to which it is a party; or (d) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Maturity Date" means April 3, 2023.

"Minimum Collateral Amount" means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 102% of the Fronting Exposure of the applicable L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.14(a)(i), (a)(ii), (a)(iii) or (a)(iv), an amount equal to 102% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the applicable L/C Issuer in their reasonable discretion.

"MLPFS" means Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation's or any of its subsidiaries' investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement), in its capacity as sole lead arranger and bookrunner.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including any Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" or "Notes" means the Revolving Notes, the Swing Line Note and/or the Term Notes, individually or collectively, as appropriate.

"Notice of Loan Prepayment" means a notice of prepayment with respect to a Loan, which shall be in substantially the form of Exhibit K or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) appropriately completed and signed by a Responsible Officer of the applicable Borrower.

"NY MTA Projects" means those certain projects undertaken by Boingo LLC to design, build, operate and/or maintain wireless services for (a) the Long Island Railroad Atlantic Branch and associated stations, pursuant to the License Agreement for the Atlantic Terminal, Atlantic Avenue Tunnel & Jamaica Station Wireless Communications Services and Dark Fiber Project, dated as of November 15, 2018, between Metropolitan Transportation Authority, acting on behalf of itself and its subsidiary, the Long Island Rail Road Company, and Boingo LLC, as amended; and/or (b) the Grand Central Terminal East Side Access facility, pursuant to the License Agreement for the East Side Access Facilities Wireless Communications Services and Dark Fiber Project, dated as of November 15, 2018, between the Metropolitan Transportation Authority, acting on behalf of itself and its subsidiaries, the Long Island Rail Road Company and MTA Capital Construction Company, and Boingo LLC, as amended.

"NY Telecom" has the meaning specified in the introductory paragraph hereto.

"Obligations" means, with respect to each Borrower and each Guarantor, (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit and (b) all obligations of any Loan Party owing to a Treasury Management Bank or a Swap Bank in respect of Secured Treasury Management Agreements or Secured Swap Agreements, in the case of each of clauses (a) and (b), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, that, the "Obligations" of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

"<u>Outstanding Amount</u>" means (a) with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Company of Unreimbursed Amounts.

"Participant" has the meaning specified in Section 11.06(d).

"Participant Register" has the meaning specified in Section 11.06(d).

"<u>Participating Member State</u>" means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"PATRIOT Act" has the meaning specified in Section 11.17.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Internal Revenue Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

"<u>Pension Plan</u>" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to minimum funding standards under Section 412 of the Internal Revenue Code.

"<u>Permitted Acquisitions</u>" means Investments consisting of an Acquisition by any Loan Party; <u>provided</u>, <u>that</u>: (a) no Default shall have occurred and be continuing or would result from such Acquisition, (b) the property acquired (or the property of the Person acquired) in such Acquisition is used or useful in the same or a related line of business as the Company and its Subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof), (c) the Administrative Agent shall have received all items in respect of the Equity Interests or property acquired in such Acquisition required to be delivered by the terms of <u>Section 7.12</u> and/or <u>Section 7.14</u>, (d) in the case of an Acquisition of the Equity Interests of

another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such Acquisition, (e) the Company shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving Pro Forma Effect to such Acquisition, (i) the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 as of the most recent fiscal quarter end for which the Company was required to deliver financial statements pursuant to Section 7.01(a) or (b) and (ii) the Consolidated Senior Secured Leverage Ratio would be less than 2.00 to 1.00, (f) the Company shall have delivered to the Administrative Agent pro forma financial statements for the Company and its Subsidiaries after giving effect to such Acquisition for the twelve-month period ending as of the most recent fiscal quarter in a form satisfactory to the Administrative Agent, (g) the representations and warranties made by the Loan Parties in each Loan Document shall be true and correct in all respects at and as if made as of the date of such Acquisition (after giving effect thereto) except to the extent such representations and warranties expressly relate to an earlier date in which case they shall be true and correct in all respects as of such earlier date and except that for purposes of this clause (g), the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01, (h) if such transaction involves the purchase of an interest in a partnership between the Company (or a Subsidiary) as a general partner and entities unaffiliated with a Company or such Subsidiary as the other partners, such transaction shall be effected by having such equity interest acquired by a corporate holding company directly or indirectly wholly-owned by the Company newly formed for the sole purpose of effecting such transaction, (i) immediately after giving effect to such Acquisition, the Loan Parties shall have at least \$25,000,000 of Liquidity, (j) the aggregate cash and non-cash consideration (including any assumption of Indebtedness, deferred purchase price, any Earn Out Obligations and any equity consideration) paid by the Loan Parties for all such Acquisitions occurring during the term of this Agreement shall not exceed \$150,000,000; provided, that, solely for purposes of determining whether the consummation of any Acquisition would be permitted hereunder and notwithstanding anything to the contrary contained in this clause (j), if the Consolidated Senior Secured Leverage Ratio, upon giving Pro Forma Effect to such Acquisition, would be less than 1.00 to 1.00, then the aggregate cash and non-cash consideration (including any assumption of Indebtedness, deferred purchase price, any Earn Out Obligations and any equity consideration) paid by the Loan Parties for all such Acquisitions occurring during the term of this Agreement shall not exceed \$175,000,000, (k) the aggregate cash and non-cash consideration (including any assumption of Indebtedness, deferred purchase price, any Earn Out Obligations and any equity consideration) paid by the Loan Parties for any such Acquisition shall not exceed \$75,000,000; provided, that, the requirements of this clause (k) shall not apply if, upon giving Pro Forma Effect to such Acquisition, the Consolidated Senior Secured Leverage Ratio shall be less than 1.00 to 1.00 and (1) Target EBITDA of the applicable Target, for the period of the four fiscal quarters most recently ended prior to the date of consummation of such Acquisition, shall not have been less than \$0.

"Permitted Liens" means, at any time, Liens in respect of property of any Loan Party or any of its Subsidiaries permitted to exist at such time pursuant to the terms of Section 8.01.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"<u>Plan</u>" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Borrower or any ERISA Affiliate or any such Plan to which any Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified in Section 7.02.

"Pledge Agreement" means the pledge agreement dated as of the Closing Date executed in favor of the Administrative Agent, for the benefit of the holders of the Obligations, by each of the Loan Parties, as amended or modified from time to time in accordance with the terms hereof.

"Pro Forma Basis", "Pro Forma Compliance" and "Pro Forma Effect" means, in respect of a Specified Transaction, that such Specified Transaction and the following transactions in connection therewith (to the extent applicable) shall be deemed to have occurred as of the first day of the applicable period of measurement for the applicable covenant or requirement: (a) (i) with respect to any Disposition, Involuntary Disposition or sale, transfer or other disposition that results in a Person ceasing to be a Subsidiary, income statement and cash flow statement items (whether positive or negative) attributable to the Person or property disposed of shall be excluded and (ii) with respect to any Acquisition or Investment, income statement and cash flow statement items (whether positive or negative) attributable to the Person or property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement items for the Company and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.01 and (B) such items are supported by financial statements or other information satisfactory to the Administrative Agent, (b) any retirement of Indebtedness and (c) any incurrence or assumption of Indebtedness by the Company or any Subsidiary (and 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 which is or would be in effect with respect to such Indebtedness as at the relevant date of determination); provided, that, (x) Pro Forma Basis, Pro Forma Compliance and Pro Forma Effect in respect of any Specified Transaction shall be calculated in a reasonable and factually supportable manner and certified by a Responsible Officer of the Company and (y) any such calculation shall be subject to the applicable limitations set forth in the definition of Consolidated EBITDA.

"Pro Forma Compliance Certificate" means a certificate of a Responsible Officer of the Company containing reasonably detailed calculations of the Consolidated Senior Secured Leverage Ratio, the Consolidated Total Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio as of the most recent fiscal quarter end for which the Company was required to deliver financial statements pursuant to Section 7.01(a) or (b) after giving Pro Forma Effect to the applicable Specified Transaction.

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

"Public Lender" has the meaning specified in Section 7.02.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualified at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Recipient" means the Administrative Agent, any Lender, an L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

"Register" has the meaning specified in Section 11.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, at any time, Lenders that have Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders; provided, that, if at any time there exist three (3) or fewer Lenders that are not Affiliates, the above percentage shall remain 50% but "Required Lenders" shall include at least two (2) Lenders that are not Affiliates. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided, that, the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or the applicable L/C Issuer, as the case may be, in making such determination.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party and, solely for purposes of the delivery of certificates pursuant to Sections 5.01 or 7.12(b), the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and appropriate authorization documentation, in each case, in form and substance satisfactory to the Administrative Agent.

"Restricted Payment" means (a) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of any Loan Party or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to the Company's stockholders, partners or members (or the equivalent Person thereof), or any setting apart of funds or property for any of the foregoing and (b) any payment made in cash to the holders of Convertible Bond Indebtedness in excess of the original principal amount thereof and interest thereon, unless and to the extent that a corresponding amount is received in cash substantially contemporaneously from the other parties to Capped Call Transactions relating to such Convertible Bond Indebtedness.

"Revaluation Date" means, with respect to any Letter of Credit, each of the following: (a) each date of issuance, amendment and/or extension of a Letter of Credit denominated in an Alternative Currency, (b) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (c) in the case of all Existing Letters of Credit denominated in Alternative Currencies, the Closing Date and (d) such additional dates as the L/C Issuer shall determine or the Required Lenders shall require.

"Revolving Commitment" means, as to each Lender, its obligation to (a) make Revolving Loans to the Company pursuant to Section 2.01, (b) purchase participations in L/C Obligations and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to

exceed the amount set forth opposite such Lender's name on <u>Schedule 2.01</u> or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Exposure" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's participation in L/C Obligations and Swing Line Loans at such time.

"Revolving Loan" has the meaning specified in Section 2.01(a).

"Revolving Note" has the meaning specified in Section 2.11(a).

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

"Sale and Leaseback Transaction" means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby the Loan Party or such Subsidiary 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.

"Sanctions" has the meaning set forth in Section 6.22.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Party Designation Notice" means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit J.

"Secured Swap Agreement" means any Swap Contract permitted under Section 8.03 between any Loan Party and any Swap Bank; provided, that, for any of the foregoing to be included as a "Secured Swap Agreement" on any date of determination by the Administrative Agent, the applicable Swap Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

"Secured Treasury Management Agreement" means any Treasury Management Agreement between any Loan Party and any Treasury Management Bank; provided, that, for any of the foregoing to be included as a "Secured Treasury Management Agreement" on any date of determination by the Administrative Agent, the applicable Treasury Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

"Securitization Transaction" means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

"Security Agreement" means the security agreement dated as of the Closing Date executed in favor of the Administrative Agent, for the benefit of the holders of the Obligations, by each of the Loan Parties, as amended or modified from time to time in accordance with the terms hereof.

"Solvent" or "Solvency" means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Loan Party" has the meaning set forth in Section 4.08.

"Specified Transaction" means (a) any Acquisition, any Disposition, any sale, transfer or other disposition that results in a Person ceasing to be a Subsidiary, any Involuntary Disposition, any Investment that results in a Person becoming a Subsidiary, in each case, whether by merger, consolidation or otherwise, or any incurrence or repayment of Indebtedness or (b) any other event that by the terms of the Loan Documents requires Pro Forma Compliance with a test or covenant or requires such test or covenant to be calculated on a Pro Forma Basis.

"Spot Rate" for a currency means the rate determined by an L/C Issuer to be the rate quoted by such L/C Issuer as the spot rate for the purchase by such L/C Issuer of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided, that, such L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or such L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided, further, that, such L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company.

"SVB Fee Letter" means that certain fee letter agreement, dated as of February 25, 2019 among the Company and Silicon Valley Bank.

"Swap Bank" means any Person that (a) at the time it enters into a Swap Contract, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, (b) in the case of any Swap Contract in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent and a party to a Swap Contract or (c) within thirty (30) days after the time it enters into the applicable Swap Contract, becomes a Lender, the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case, in its capacity as a party to such Swap Contract.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, to the extent entered into in connection with Convertible Bond Indebtedness permitted by Section 8.03(n), Capped Call Transactions, and any arrangements or agreements related thereto, shall not constitute Swap Contracts.

"Swap Obligation" means, with respect to any Loan Party any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swing Line Lender" means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Borrowing of Swing Line Loans pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B or such other form as is approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

"Swing Line Note" has the meaning specified in Section 2.11(a).

"Swing Line Sublimit" means an amount equal to the lesser of (a) the Aggregate Revolving Commitments and (b) \$10,000,000. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

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"<u>Target</u>" means, with respect to any Acquisition, the Person (and its Subsidiaries, as applicable) or the property, division, line of business or other business unit of another Person, in each case to be acquired in connection with such Acquisition.

"Target EBITDA" means, for any period, with respect to any Target on a consolidated basis, an amount equal to the net income attributable to such Target for such period as determined in accordance with GAAP <u>plus</u> the following (without duplication, in each case to the extent reducing such net income for such period): (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP and attributable to such Target for such period, (b) the provision for federal, state, local and foreign income taxes attributable to such Target for such period and (c) depreciation and amortization expense attributable to such Target for such period, all as determined in accordance with GAAP.

"<u>Taxes</u>" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"<u>Term Loan</u>" has the meaning specified in <u>Section 2.01(b)</u>.

"Term Loan Commitment" means, as to each Lender, its obligation to make its portion of the Term Loan to NY Telecom pursuant

to <u>Section 2.01(b)</u>, in the principal amount set forth opposite such Lender's name on <u>Schedule 2.01</u>. The aggregate principal amount of the Term Loan Commitments of all of the Lenders as in effect on the Closing Date is THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000).

"Term Note" has the meaning specified in Section 2.11(a).

"Threshold Amount" means \$2,500,000.

"<u>Total Credit Exposure</u>" means, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure and Outstanding Amount of all Term Loans of such Lender at such time.

"<u>Total Revolving Outstandings</u>" means the aggregate Outstanding Amount of all Revolving Loans, all Swing Line Loans and all L/C Obligations.

"<u>Treasury Management Agreement</u>" means any agreement governing the provision of treasury or cash management services, including deposit accounts, overdraft, credit or debit card, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"Treasury Management Bank" means any Person that (a) at the time it enters into a Treasury Management Agreement, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, (b) in the case of any Treasury Management Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent and a party to a Treasury Management Agreement or (c) within thirty (30) days after the time it enters into the applicable Treasury Management Agreement, becomes a Lender, the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case, in its capacity as a party to such Treasury Management Agreement.

"Type" means, with respect to any Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"UCC" means the Uniform Commercial Code as in effect in the State of New York; provided, that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e)(ii)(B)(III).

"<u>Voting Stock</u>" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wholly Owned Subsidiary" means any Person 100% of whose Equity Interests are at the time owned by the Company directly or indirectly through other Persons 100% of whose Equity Interests are at the time owned, directly or indirectly, by the Company.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

### 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto", "herein", "hereof" and "hereunder", and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety

and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all real and personal property and tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Any and all references to "Borrower", regardless of whether preceded by the term "a", "any", "each of", "all", "and/or" or any other similar term, shall be deemed to refer, as the context requires, to each and every (and/or any one or all) parties constituting a Borrower, individually and/or in the aggregate.

- (b) In the computation of periods of time from a specified date to a later specified date, the word "<u>from</u>" means "from and including;" the words "<u>to</u>" and "<u>until</u>" each mean "to but excluding;" and the word "<u>through</u>" means "to and including."
- (c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

## 1.03 Accounting Terms.

- (a) <u>Generally</u>. Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein; <u>provided</u>, <u>that</u>, calculations of Attributable Indebtedness under any Synthetic Lease or the implied interest component of any Synthetic Lease shall be made by the Company in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Company and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.
- (b) Changes in GAAP. The Company will provide a written summary of material changes in GAAP and in the consistent application thereof with each annual and quarterly Compliance Certificate delivered in accordance with Section 7.02(b). If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be

classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

- (c) Pro Forma Calculations. Notwithstanding anything to the contrary contained herein, all calculations of the Consolidated Senior Secured Leverage Ratio, the Consolidated Total Leverage Ratio (including for purposes of determining the Applicable Rate) and the Consolidated Fixed Charge Coverage Ratio shall be made on a Pro Forma Basis with respect to all Specified Transactions occurring during the applicable four quarter period to which such calculation relates, and/or subsequent to the end of such four quarter period but not later than the date of such calculation; provided, that, notwithstanding the foregoing, when calculating the Consolidated Senior Secured Leverage Ratio, the Consolidated Total Leverage Ratio and/or the Consolidated Fixed Charge Coverage Ratio for purposes of determining (x) compliance with Section 8.11(a), (b) and/or (c), as applicable and/or (y) the Applicable Rate, any Specified Transaction and any related adjustment contemplated in the definition of Pro Forma Basis that occurred subsequent to the end of the applicable four quarter period shall not be given Pro Forma Effect.
- (d) <u>Consolidation of Variable Interest Entities</u>. All references herein to consolidated financial statements of the Company and its Subsidiaries or to the determination of any amount for the Company and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Company is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.
- (e) <u>Convertible Bond Indebtedness</u>. The parties hereto acknowledge and agree that for purposes of all calculations hereunder, the principal amount of Convertible Bond Indebtedness shall be the outstanding principal amount thereof, valued at par.

## 1.04 Rounding.

Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

### 1.05 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

#### 1.06 Letter of Credit Amounts.

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

# 1.07 Exchange Rates; Currency Equivalents; Rates.

- (a) Each L/C Issuer shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions made by such L/C Issuer and Outstanding Amounts with respect to the L/C Obligations of such L/C Issuer denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by the Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the applicable L/C Issuer.
- (b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the applicable L/C Issuer.
- (c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurodollar Rate" or with respect to any comparable or successor rate thereto.

### 1.08 Additional Alternative Currencies.

The Company may from time to time request that Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency"; provided, that, such requested currency is an Eligible Currency. In the case of any such request, such request shall be subject to the approval of the Administrative Agent and each L/C Issuer.

#### **ARTICLE II**

### THE COMMITMENTS AND CREDIT EXTENSIONS

### 2.01 Commitments.

(a) Revolving Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Company in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; provided, that, after giving effect to any Borrowing of Revolving Loans, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, and (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Revolving Commitment. Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Company may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, or a combination thereof, as further provided herein.

(b) <u>Term Loan</u>. Subject to the terms and conditions set forth herein, each Lender severally agrees to make its portion of a term loan (the "<u>Term Loan</u>") to NY Telecom in Dollars on the Closing Date in an amount not to exceed such Lender's Term Loan Commitment. Amounts repaid on the Term Loan may not be reborrowed. The Term Loan may consist of Base Rate Loans or Eurodollar Rate Loans or a combination thereof, as further provided herein.

## 2.02 Borrowings, Conversions and Continuations of Loans.

- Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the applicable Borrower's irrevocable notice to the Administrative Agent, which may be given by (x) telephone or (y) a Loan Notice; provided, that, each telephonic notice by a Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of such Borrower. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of, Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, in connection with any conversion or continuation of the Term Loan, if less, the entire principal thereof then outstanding). Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, in connection with any conversion of the Term Loan, if less, the entire principal thereof then outstanding). Each Loan Notice (whether telephonic or written) shall specify (i) whether the applicable Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the applicable Borrower fails to specify a Type of a Loan in a Loan Notice, then the applicable Loans shall be made as Base Rate Loans. If the applicable Borrower fails to give a timely notice requesting a conversion or continuation with respect to a Eurodollar Rate Loan, then the applicable Loans shall be continued, effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans as Eurodollar Rate Loans with an Interest Period of one month. If the applicable Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.
- (b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans as described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Credit Extension, Section 5.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the applicable Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case

in accordance with instructions provided to (and acceptable to) the Administrative Agent by the applicable Borrower; <u>provided</u>, <u>that</u>, if, on the date of a Borrowing of Revolving Loans, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, <u>first</u>, shall be applied to the payment in full of any such L/C Borrowings and <u>second</u>, shall be made available to the Company as provided above.

- (c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of the Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the then outstanding Eurodollar Rate Loans be converted immediately to Base Rate Loans.
- (d) The Administrative Agent shall promptly notify the Company and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Company and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.
- (e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than eight (8) Interest Periods in effect with respect to all Loans.
- (f) The Company may at any time and from time to time, upon prior written notice by the Company to the Administrative Agent, increase the Aggregate Revolving Commitments (but not the Letter of Credit Sublimit or the Swing Line Sublimit) by a maximum aggregate amount of up to FIFTY MILLION DOLLARS (\$50,000,000) with additional Revolving Commitments from any existing Lender with a Revolving Commitment or new Revolving Commitments from any other Person selected by the Company and acceptable to the Administrative Agent and the L/C Issuers; provided, that:
  - (i) any such increase shall be in a minimum principal amount of \$5,000,000 and in integral multiples of \$1,000,000 in excess thereof;
    - (ii) no Default or Event of Default shall exist and be continuing at the time of any such increase;
  - (iii) no existing Lender shall be under any obligation to increase its Revolving Commitment and any such decision whether to increase its Revolving Commitment shall be in such Lender's sole and absolute discretion;
  - (iv) (A) any new Lender shall join this Agreement by executing such joinder documents required by the Administrative Agent and/or (B) any existing Lender electing to increase its Revolving Commitment shall have executed a commitment agreement satisfactory to the Administrative Agent;
  - (v) as a condition precedent to such increase, the Company shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the date of such increase (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Company, certifying that, before and

after giving effect to such increase, (1) the representations and warranties contained in <u>Article VI</u> and the other Loan Documents are true and correct in all respects on and as of the date of such increase, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all respects as of such earlier date, and except that for purposes of this <u>Section 2.02(f)</u>, the representations and warranties contained in <u>subsections (a)</u> and (b) of <u>Section 6.05</u> shall be deemed to refer to the most recent statements furnished pursuant to <u>clauses (a)</u> and (b), respectively, of <u>Section 7.01</u>, and (2) no Default or Event of Default exists;

- (vi) a Responsible Officer of the Company shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving Pro Forma Effect to any such increase in the Revolving Commitments (and assuming for such calculation that such increase is fully drawn), the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 as of the most recent fiscal quarter for which the Company was required to deliver financial statements pursuant to Section 7.01(a) or (b); and
- (vii) <u>Schedule 2.01</u> shall be deemed revised to include any increase in the Aggregate Revolving Commitments pursuant to this Section 2.02(f) and to include thereon any Person that becomes a Lender pursuant to this Section 2.02(f).

The Company shall prepay any Loans owing by it and outstanding on the date of any such increase (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Loans ratable with any revised Commitments arising from any nonratable increase in the Commitments under this Section.

## 2.03 Letters of Credit.

#### (a) The Letter of Credit Commitment.

Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of the Company or any of its Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Company or its Subsidiaries and any drawings thereunder; provided, that, after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (y) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Revolving Commitment and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit; provided, further, that, after giving effect to all L/C Credit Extensions, the aggregate Outstanding Amount of all L/C Obligations of any L/C Issuer shall not exceed such L/C Issuer's L/C Commitment. Each request by the Company for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Company that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Company's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Company may, during the foregoing period, obtain

Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. Furthermore, each Lender acknowledges and confirms that it has a participation interest in the liability of the applicable L/C Issuer under the Existing Letters of Credit in a percentage equal to its Applicable Percentage of the Revolving Loans. The Company's reimbursement obligations in respect of the Existing Letters of Credit, and each Lender's obligations in connection therewith, shall be governed by the terms of this Agreement.

# (ii) No L/C Issuer shall issue any Letter of Credit if:

- (A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Administrative Agent and the Required Lenders have approved such expiry date beyond such twelve (12) months; or
- (B) the expiry date of such requested Letter of Credit would occur after the date that is 365 days after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date. For the avoidance of doubt, the parties hereto agree that the obligation of the Lenders to reimburse the applicable L/C Issuer for any Unreimbursed Amount with respect to any Letter of Credit shall terminate on the Maturity Date with respect to any drawings occurring after that date.

#### (iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

- (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;
- (B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;
- (C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than \$5,000;
- (D) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency; or
- (E) any Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral,

satisfactory to such L/C Issuer (in its sole discretion) with the Company or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

- (iv) The applicable L/C Issuer shall not amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.
- (v) The applicable L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.
- (vi) The applicable L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and such L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in <a href="Article X">Article X</a> with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in <a href="Article X">Article X</a> included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such L/C Issuer.

### (b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Company delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Company. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the applicable L/C Issuer, by personal delivery or by any other means acceptable to the applicable L/C Issuer. Such Letter of Credit Application must be received by the applicable L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least five (5) Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as such L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable L/C Issuer: (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as such L/C

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Issuer may require. Additionally, the Company shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such L/C Issuer or the Administrative Agent may require.

- (ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Company and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless such L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in <a href="Article V">Article V</a> shall not be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Company or the applicable Subsidiary or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.
- (iii) If the Company so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension")

Letter of Credit"); provided, that, any such Auto-Extension Letter of Credit must permit such L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Company shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the date that is 365 days after the Letter of Credit Expiration Date; provided, that, such L/C Issuer shall not permit any such extension if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Company that one or more of the applicable conditions specified in Section 5.02 is not then satisfied, and in each case directing such L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Company and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

### (c) Drawings and Reimbursements; Funding of Participations.

- Upon receipt from the beneficiary of any Letter of Credit of any notice of drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Company and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Company shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the applicable L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars or (B) in the absence of any such requirement for reimbursement in Dollars, the Company shall have notified such L/C Issuer promptly following receipt of the notice of drawing that the Company will reimburse such L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Company of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the date of any payment by the applicable L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), the Company shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in Dollars pursuant to the second sentence in this Section 2.03(c)(i) and (B) the Dollar amount paid by the Company, whether on or after the Honor Date, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, the Company agrees, as a separate and independent obligation, to indemnify the L/C Issuer for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing. If the Company fails to so reimburse the applicable L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the Company shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the conditions set forth in Section 5.02 (other than the delivery of a Loan Notice) and provided, that, after giving effect to such Borrowing, the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments. Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided, that, the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.
- (ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) to the Administrative Agent for the account of the applicable L/C Issuer at the Administrative Agent's Office in an amount in Dollars equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer.

- (iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans because the conditions set forth in Section 5.02 cannot be satisfied or for any other reason, the Company shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of such L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.
- (iv) Until each Lender funds its Revolving Loan or L/C Advance pursuant to this <u>Section 2.03(c)</u> to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of such L/C Issuer.
- (v) Each Lender's obligation to make Revolving Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, that, each Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 5.02 (other than delivery by the Company of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Company to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.
- (vi) If any Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount in Dollars with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of such L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

### (d) Repayment of Participations.

(i) At any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Lender's L/C Advance in respect of such

payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Company or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

- (ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.
- (e) <u>Obligations Absolute</u>. The obligation of the Company to reimburse the L/C Issuers for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:
  - (i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;
  - (ii) the existence of any claim, counterclaim, setoff, defense or other right that the Company or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), an L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
  - (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
  - (iv) waiver by an L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of the Company or any waiver by an L/C Issuer which does not in fact materially prejudice the Company;
  - (v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
  - (vi) any payment made by an L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the ISP;

- (vii) any payment by an L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by an L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;
- (viii) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Company or any Subsidiary in the relevant currency markets generally; or
- (ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company or any Subsidiary.

The Company shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Company's instructions or other irregularity, the Company will immediately notify the applicable L/C Issuer. The Company shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

Role of L/C Issuer. Each Lender and the Company agree that, in paying any drawing under a Letter of Credit, an L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of an L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Company hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, that, this assumption is not intended to, and shall not, preclude the Company's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of an L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (ix) of Section 2.03(e); provided, that, anything in such clauses to the contrary notwithstanding, the Company may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Company, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Company which the Company proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit unless such L/C Issuer is prevented or prohibited from so paying as a result of any order or directive of any court or other Governmental Authority. In furtherance and not in limitation of the foregoing, an L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter

of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. An L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

- Applicability of ISP; Limitation of Liability. Unless otherwise expressly agreed by the applicable L/C Issuer and the Company when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Company for, and no L/C Issuer's rights and remedies against the Company shall be impaired by, any action or inaction of such L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where such L/C Issuer or the beneficiary is located, the practice stated in the ISP, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.
- (h) <u>Letter of Credit Fees</u>. The Company shall pay to the Administrative Agent for the account of each Lender in accordance, subject to <u>Section 2.15</u>, with its Applicable Percentage a Letter of Credit fee (the "<u>Letter of Credit Fee</u>") for each Letter of Credit equal to the Applicable Rate <u>times</u> the Dollar Equivalent of the daily maximum amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with <u>Section 1.06</u>. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.
- (i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. The Company shall pay directly to Bank of America for its own account a fronting fee with respect to each Letter of Credit issued by Bank of America, at the rate per annum specified in the Bank of America Fee Letter, computed on the Dollar Equivalent of the actual daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit) and on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. The Company shall pay directly to Silicon Valley Bank for its own account a fronting fee with respect to each Letter of Credit issued by Silicon Valley Bank on the dates and in the amounts set forth in the SVB Fee Letter. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Company shall pay directly to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges,

of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

- (j) <u>Conflict with Issuer Documents</u>. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.
- (k) <u>Letters of Credit Issued for Subsidiaries</u>. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Company shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Company hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Company, and that the Company's business derives substantial benefits from the businesses of such Subsidiaries.
- (l) <u>L/C Issuer Reports to the Administrative Agent</u>. Unless otherwise agreed by the Administrative Agent, each L/C Issuer shall, in addition to its notification obligations set forth elsewhere in this <u>Section 2.03</u>, provide the Administrative Agent a Letter of Credit Report, as set forth below:
  - (i) reasonably prior to the time that such L/C Issuer issues, amends, renews, increases or extends a Letter of Credit, the date of such issuance, amendment, renewal, increase or extension and the stated amount of the applicable Letters of Credit after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed);
  - (ii) on each Business Day on which such L/C Issuer makes a payment pursuant to a Letter of Credit, the date and amount of such payment;
  - (iii) on any Business Day on which the Company fails to reimburse a payment made pursuant to a Letter of Credit required to be reimbursed to such L/C Issuer on such day, the date of such failure and the amount of such payment;
  - (iv) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such L/C Issuer; and
  - (v) for so long as any Letter of Credit issued by an L/C Issuer is outstanding, such L/C Issuer shall deliver to the Administrative Agent (A) on the last Business Day of each calendar month, (B) at all other times a Letter of Credit Report is required to be delivered pursuant to this Agreement, and (C) on each date that (1) an L/C Credit Extension occurs or (2) there is any expiration, cancellation and/or disbursement, in each case, with respect to any such Letter of Credit, a Letter of Credit Report appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer.

## 2.04 Swing Line Loans.

(a) <u>Swing Line Facility</u>. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this <u>Section 2.04</u>, may in its sole discretion make loans (each such loan, a "<u>Swing Line Loan</u>") to the Company in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit; <u>provided</u>, <u>that</u>, (i) after giving effect to any Swing Line Loan, (A) the Total Revolving Outstandings

shall not exceed the Aggregate Revolving Commitments, and (B) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Revolving Commitment, (ii) the Company shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (iii) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan.

Borrowing Procedures. Each Borrowing of Swing Line Loans shall be made upon the Company's irrevocable (b) notice to the Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) a Swing Line Loan Notice; provided, that, each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Each such Swing Line Loan Notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum principal amount of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Borrowing of Swing Line Loans (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Company.

#### (c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the Company (which hereby irrevocably requests and authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the conditions set forth in Section 5.02 (other than the delivery of a Loan Notice) and provided, that, after giving effect to such Borrowing, the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments. The Swing Line Lender shall furnish the Company with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately

available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

- (ii) If for any reason any Swing Line Loan cannot be refinanced by such a Borrowing of Revolving Loans in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.
- (iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.
- (iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, that, each Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 5.02 (other than delivery by the Company of a Loan Notice). No such purchase or funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Swing Line Loans, together with interest as provided herein.

### (d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to

reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

- (ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.
- (e) <u>Interest for Account of Swing Line Lender</u>. The Swing Line Lender shall be responsible for invoicing the Company for interest on the Swing Line Loans. Until each Lender funds its Revolving Loans that are Base Rate Loans or risk participation pursuant to this <u>Section 2.04</u> to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.
- (f) <u>Payments Directly to Swing Line Lender</u>. The Company shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

## 2.05 Prepayments.

### (a) Voluntary Prepayments.

Revolving Loans and Term Loan. The applicable Borrower may, upon notice from such Borrower to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Revolving Loans or the Term Loan in whole or in part without premium or penalty; provided, that, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any such prepayment of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding); and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and whether the Loans to be prepaid are Revolving Loans or the Term Loan. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by a Borrower, such Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.15, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages. Each such prepayment of the Term Loan shall be applied to the remaining principal amortization payments of the Term Loan in inverse order of maturity until the Term Loan has been paid in full.

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(ii) Swing Line Loans. The Company may, upon notice to the Swing Line Lender pursuant to delivery to the Swing Line Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided, that, (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

## (b) Mandatory Prepayments of Loans.

(i) <u>Revolving Commitments</u>. If for any reason the Total Revolving Outstandings at any time exceed the Aggregate Revolving Commitments then in effect, the Company shall immediately prepay Revolving Loans and/or the Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; <u>provided</u>, that, the Company shall not be required to Cash Collateralize the L/C Obligations pursuant to this <u>Section 2.05(b)(i)</u> unless after the prepayment in full of the Revolving Loans and the Swing Line Loans the Total Revolving Outstandings exceed the Aggregate Revolving Commitments then in effect.

(ii) <u>Application of Mandatory Prepayments</u>. All amounts required to be paid pursuant to <u>Section 2.05(b)</u> (i) shall be applied ratably to Revolving Loans and Swing Line Loans and (after all Revolving Loans and Swing Line Loans have been repaid) to Cash Collateralize L/C Obligations.

Within the parameters of the application set forth above, prepayments shall be applied, <u>first</u>, to Base Rate Loans and <u>then</u>, to Eurodollar Rate Loans in direct order of Interest Period maturities. All prepayments under this <u>Section 2.05(b)</u> shall be subject to <u>Section 3.05</u>, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

### 2.06 Termination or Reduction of Aggregate Revolving Commitments.

(a) Optional Reductions. The Company may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments to an amount not less than the Outstanding Amount of Revolving Loans, Swing Line Loans and L/C Obligations; provided, that, (i) any such notice shall be received by the Administrative Agent not later than 12:00 noon five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$2,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Company shall not terminate or reduce (A) the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit.

- (b) <u>Mandatory Reductions</u>. If after giving effect to any reduction or termination of Revolving Commitments under this <u>Section 2.06</u>, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the Aggregate Revolving Commitments at such time, the Letter of Credit Sublimit or the Swing Line Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.
- (c) <u>Notice</u>. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, the Swing Line Sublimit or the Aggregate Revolving Commitments under this <u>Section 2.06</u>. Upon any reduction of the Aggregate Revolving Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees in respect of the Aggregate Revolving Commitments accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

## 2.07 Repayment of Loans.

- (a) <u>Revolving Loans</u>. The Company shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Revolving Loans outstanding on such date.
- (b) <u>Swing Line Loans</u>. The Company shall repay each Swing Line Loan on the earliest to occur of (i) the date within one (1) Business Day of demand therefor by the Swing Line Lender, (ii) the date ten (10) Business Days after such Swing Line Loan is made and (iii) the Maturity Date.
- (c) <u>Term Loan</u>. NY Telecom shall repay the outstanding principal amount of the Term Loan in installments on the last Business Day of each March, June, September and December and on the Maturity Date, in each case, in the respective amounts set forth in the table below (as such installments may hereafter be adjusted as a result of prepayments made pursuant to <u>Section 2.05</u>), unless accelerated sooner pursuant to <u>Section 9.02</u>:

Payment Dates	Principal Amortization Payment
March, 2019	\$194,460
June, 2019	\$194,460
September, 2019	\$194,460
December, 2019	\$194,460
March, 2020	\$194,460
June, 2020	\$194,460
September, 2020	\$194,460
December, 2020	\$194,460
March, 2021	\$194,460
June, 2021	\$194,460
September, 2021	\$194,460
December, 2021	\$194,460
March, 2022	\$194,460
June, 2022	\$194,460
September, 2022	\$194,460
December, 2022	\$194,460
Maturity Date	Outstanding Principal Balance of Term Loan

### 2.08 Interest.

- (a) Subject to the provisions of <u>subsection (b)</u> below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of the Eurodollar Rate for such Interest Period <u>plus</u> the Applicable Rate, (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate <u>plus</u> the Applicable Rate and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.
- (b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, all outstanding Obligations hereunder shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.
  - (ii) If any amount (other than principal of any Loan) is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.
  - (iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.
  - (iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.
- (c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

### 2.09 Fees.

In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) <u>Commitment Fee.</u> The Company shall pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage, a commitment fee (the "<u>Commitment Fee</u>") at a rate per annum equal to the product of (i) the Applicable Rate <u>times</u> (ii) the actual daily amount by which the Aggregate Revolving Commitments exceed the sum of (A) the Outstanding Amount of Revolving Loans <u>plus</u> (B) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in <u>Section 2.15</u>. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Aggregate Revolving Commitments for purposes of determining the Commitment Fee. The Commitment Fee shall accrue at all times during the period from and including the Closing Date to the earliest of (x) the Maturity Date, (y) the date of termination of the Aggregate Revolving Commitments pursuant to <u>Section 2.06</u> and (z) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to <u>Section 9.02</u>, including at any time during which one or more of the conditions in <u>Article V</u> is not

met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date; provided, that, (A) no Commitment Fee shall accrue on the Revolving Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (B) any Commitment Fee accrued with respect to the Revolving Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Company so long as such Lender shall be a Defaulting Lender. The Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) <u>Fee Letters</u>. The Company shall pay to MLPFS, the Administrative Agent and Silicon Valley Bank for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

## 2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

- (a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided, that, any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.
- (b) If, as a result of any restatement of or other adjustment to the financial statements of the Company or for any other reason, the Company or the Lenders determine that (i) the Consolidated Total Leverage Ratio as calculated by the Company as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Total Leverage Ratio would have resulted in higher pricing for such period, the Borrowers shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuers, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to a Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuers), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuers, as the case may be, under Section 2.03(c)(iii), 2.03(h) or 2.08(b) or under Article IX. The Borrowers' obligations under this paragraph shall survive the termination of the Commitments of all of the Lenders and the repayment of all other Obligations hereunder.

## 2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each

Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the applicable Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note, which shall evidence such Lender's Loans in addition to such accounts or records. Each such promissory note shall (i) in the case of Revolving Loans, be in the form of Exhibit C (a "Revolving Note"), (ii) in the case of Swing Line Loans, be in the form of Exhibit D (a "Swing Line Note") and (iii) in the case of the Term Loan, be in the form of Exhibit E (a "Term Note"). Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in <u>subsection (a)</u>, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

### 2.12 Payments Generally; Administrative Agent's Clawback.

- (a) <u>General</u>. All payments to be made by the Borrowers shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to the definition of "Interest Period", if any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.
- (b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of any Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately

available funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, <u>plus</u> any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or an L/C Issuer hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such L/C Issuer, as the case may be, the amount due. In such event, if the applicable Borrower has not in fact made such payment, then each of the Lenders or such L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

- (c) <u>Failure to Satisfy Conditions Precedent</u>. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this <u>Article II</u>, and such funds are not made available to a Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in <u>Article V</u> are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.
- (d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).
- (e) <u>Funding Source</u>. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

# 2.13 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it (excluding any amounts applied by the Swing Line Lender to outstanding Swing Line Loans) resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its <u>pro rata</u> share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; <u>provided</u>, <u>that</u>:

- (i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and
- (ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of a 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), (y) the application of Cash Collateral provided for in Section 2.14 or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Company or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

### 2.14 Cash Collateral.

- (a) <u>Certain Credit Support Events</u>. If (i) an L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) as of the Maturity Date, any L/C Obligation that has not been Cash Collateralized in accordance with <u>clause (ii)</u> for any reason remains outstanding, (iv) the Company shall be required to provide Cash Collateral pursuant to <u>Section 2.05(b)</u> or <u>9.02(c)</u>, or (v) there shall exist a Defaulting Lender, the Company shall immediately (in the case of <u>clause (iv)</u> above) or within one Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuers, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to <u>clause (v)</u> above, after giving effect to <u>Section 2.15(a)(iv)</u> and any Cash Collateral provided by the Defaulting Lender).
- (b) <u>Grant of Security Interest</u>. The Company, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all

balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuers as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Company will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Company shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

- (c) <u>Application</u>. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this <u>Section 2.14</u> or <u>Sections 2.03</u>, <u>2.05</u>, <u>2.15</u> or <u>9.02</u> in respect of Letters of Credit shall be held and applied in satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.
- (d) <u>Release</u>. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender) (or, as appropriate, its assignee following compliance with <u>Section 11.06(b)(vi)</u>) or (ii) the determination by the Administrative Agent and the L/C Issuers that there exists excess Cash Collateral; <u>provided</u>, <u>that</u>, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and the L/C Issuers may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

### 2.15 Defaulting Lenders.

- (a) <u>Adjustments</u>. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:
  - (i) <u>Waivers and Amendment</u>. 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" and Section 11.01.
  - (ii) <u>Defaulting Lender Waterfall</u>. Any payment of principal, interest, fees or other amount received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to <u>Article IX</u> or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to <u>Section 11.08</u>, shall be applied at such time or times as may be determined by the Administrative Agent as follows: <u>first</u>, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; <u>second</u>, to the payment on a <u>pro rata</u> basis of any amounts owing by such Defaulting Lender to the L/C Issuers or the Swing

Line Lender hereunder; third, to Cash Collateralize each L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; fourth, as the Company may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Company, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuers or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

### (iii) Certain Fees.

- (A) No Defaulting Lender shall be entitled to receive any fee payable under <u>Section 2.09(a)</u> for any period during which that Lender is a Defaulting Lender (and the Company shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).
- (B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.
- (C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to <u>clause (B)</u> above, the Company shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to <u>clause (iv)</u> below, (y) pay to each L/C Issuer the amount of any such fee otherwise

payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

- (iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 11.22, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.
- (v) <u>Cash Collateral, Repayment of Swing Line Loans</u>. If the reallocation described in <u>clause (a)(iv)</u> above cannot, or can only partially, be effected, the Company shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) <u>first</u>, prepay Swing Line Loans in an amount equal to the Swing Line Lender's Fronting Exposure and (y) <u>second</u>, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.14.
- (b) <u>Defaulting Lender Cure</u>. If the Company, the Administrative Agent, the Swing Line Lender and the L/C Issuers agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a <u>pro rata</u> basis by the Lenders in accordance with their Applicable Percentages (without giving effect to <u>Section 2.15(a)(iv)</u>), whereupon such Lender will cease to be a Defaulting Lender; <u>provided</u>, <u>that</u>, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; <u>provided</u>, <u>further</u>, <u>that</u>, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

### **ARTICLE III**

### TAXES, YIELD PROTECTION AND ILLEGALITY

### 3.01 <u>Taxes</u>.

- (a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.
- (i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any

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Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

- (ii) If any Loan Party or the Administrative Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to <u>subsection (e)</u> below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this <u>Section 3.01</u>) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.
- (iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Internal Revenue Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be

required based upon the information and documentation it has received pursuant to <u>subsection (e)</u> below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this <u>Section 3.01</u>) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

- (b) <u>Payment of Other Taxes by the Loan Parties</u>. Without limiting the provisions of <u>subsection (a)</u> above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
- (c) <u>Tax Indemnifications</u>. (i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this <u>Section 3.01</u>) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error. Each of the Loan Parties shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or an L/C Issuer for any reason

fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

- (ii) Each Lender and each L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or such L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or such L/C Issuer, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and each L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or such L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).
- (d) <u>Evidence of Payments</u>. Upon request by any Loan Party or the Administrative Agent, as the case may be, after any payment of Taxes by any Loan Party or by the Administrative Agent to a Governmental Authority as provided in this <u>Section 3.01</u>, each Loan Party shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Company, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Company or the Administrative Agent, as the case may be.
- (e) <u>Status of Lenders; Tax Documentation.</u> (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Company and the Administrative Agent, at the time or times reasonably requested by the Company or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Company or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Company or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

### (ii) Without limiting the generality of the foregoing,

- (A) any Lender that is a U.S. Person shall deliver to the Company and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;
- (B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), whichever of the following is applicable:
  - (I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
    - (II) executed originals of Internal Revenue Service Form W-8ECI,
  - (III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3) (B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3) (C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or
  - (IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of <a href="Exhibit I-2">Exhibit I-3</a>, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; <a href="provided">provided</a>, <a href="that,">that</a>, if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of <a href="Exhibit I-4">Exhibit I-4</a> on behalf of each such direct and indirect partner;

- (C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Company or the Administrative Agent to determine the withholding or deduction required to be made; and
- (D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company or the Administrative Agent 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 Company or the Administrative Agent as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.
- (iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this <u>Section 3.01</u> expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Administrative Agent in writing of its legal inability to do so.
- Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have (f) any obligation to file for or otherwise pursue on behalf of a Lender or an L/C Issuer, or have any obligation to pay to any Lender or any L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that, the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if 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 subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) <u>Survival</u>. Each party's obligations under this <u>Section 3.01</u> shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or an L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### 3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Credit Extension, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Company through the Administrative Agent, (a) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

## 3.03 Inability to Determine Rates.

If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof or otherwise, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the applicable offshore interbank eurodollar market for such currency for the applicable amount and Interest Period of such Eurodollar Rate Loan or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to this <u>clause (a)</u>, "<u>Impacted Loans</u>"), or (b) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative

Agent will promptly notify the Company and all Lenders. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing, conversion or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in <u>clause (a)(i)</u> of this Section and the Borrowers shall so request, the Administrative Agent, the affected Lenders and the Borrowers shall negotiate in good faith to amend the definition of "Eurodollar Rate" and other applicable provisions to preserve the original intent thereof in light of such change; <u>provided</u>, <u>that</u>, until so amended, such Impacted Loans will be handled as otherwise provided pursuant to the terms of this Section.

### 3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

- (a) Increased Costs Generally. If any Change in Law shall:
- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(d)) or any L/C Issuer;
- (ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in <u>clauses</u> (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or
- (iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the Borrowers will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) <u>Capital Requirements</u>. If any Lender or an L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's

capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

- (c) <u>Certificates for Reimbursement</u>. A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in <u>subsection</u> (a) or (b) of this Section and delivered to the Company shall be conclusive absent manifest error. The Borrowers shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.
- (d) Reserves on Eurodollar Rate Loans. The Borrowers shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five (5) decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided, that, the Company shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.
- (e) <u>Delay in Requests</u>. Failure or delay on the part of any Lender or an L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation; <u>provided</u>, <u>that</u>, the Borrowers shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

# 3.05 Compensation for Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

- (a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
- (b) any failure by a Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by such Borrower;
- (c) any failure by the Company to reimburse a drawing under a Letter of Credit denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or
- (d) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Company pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this <u>Section 3.05</u>, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate used in determining the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

## 3.06 Mitigation Obligations; Replacement of Lenders.

- (a) <u>Designation of a Different Lending Office</u>. If any Lender requests compensation under <u>Section 3.04</u>, or requires the Borrowers to pay any Indemnified Taxes or additional amounts to any Lender, an L/C Issuer or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to <u>Section 3.01</u>, or if any Lender gives a notice pursuant to <u>Section 3.02</u>, then at the request of the Company such Lender or such L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to <u>Section 3.01</u> or <u>3.04</u>, as the case may be, in the future, or eliminate the need for the notice pursuant to <u>Section 3.02</u>, as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or any L/C Issuer in connection with any such designation or assignment.
- (b) <u>Replacement of Lenders</u>. If any Lender requests compensation under <u>Section 3.04</u>, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender

or any Governmental Authority for the account of any Lender pursuant to <u>Section 3.01</u> and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with <u>Section 3.06(a)</u>, the Company may replace such Lender in accordance with <u>Section 11.13</u>.

## 3.07 Survival.

All of the Borrowers' obligations under this <u>Article III</u> shall survive termination of the Aggregate Revolving Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

#### 3.08 Successor LIBOR.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document (including Section 11.01 hereof), if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrowers or the Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Borrowers or the Required Lenders (as applicable) have determined, that:

- (a) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or
- (b) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "Scheduled Unavailability Date"); or
- (c) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrowers may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "LIBOR Successor Rate"), together with any proposed LIBOR Successor Rate Conforming Changes and any such amendment shall become effective at 5:00 p.m. (Eastern time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrowers unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders do not accept such amendment.

If no LIBOR Successor Rate has been determined and the circumstances under <u>clause (a)</u> above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Company and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans

or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

### **ARTICLE IV**

#### **GUARANTY**

### 4.01 The Guaranty.

Each of the Guarantors hereby jointly and severally guarantees to each Lender, each Swap Bank, each Treasury Management Bank, and the Administrative Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of all Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, Secured Swap Agreements or Secured Treasury Management Agreements, (x) the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Debtor Relief Laws or any comparable provisions of any applicable state law and (y) the Obligations of a Guarantor that are guaranteed under this Guaranty shall exclude any Excluded Swap Obligations with respect to such Guarantor.

## 4.02 Obligations Unconditional.

The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents, Secured Swap Agreements or Secured Treasury Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against any Borrower or any other Guarantor for amounts paid under this Article IV until such time as the Obligations have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

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- (a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of any of the Loan Documents, any Secured Swap Agreement, or any Secured Treasury Management Agreement, or any other agreement or instrument referred to in the Loan Documents, such Secured Swap Agreements or such Secured Treasury Management Agreements shall be done or omitted;
- (c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents, any Secured Swap Agreement or any Secured Treasury Management Agreement, or any other agreement or instrument referred to in the Loan Documents, such Secured Swap Agreements or such Secured Treasury Management Agreements shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien granted to, or in favor of, the Administrative Agent or any Lender or Lenders as security for any of the Obligations shall fail to attach or be perfected; or
- (e) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any

Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents, any Secured Swap Agreement or any Secured Treasury Management Agreement, or any other agreement or instrument referred to in the Loan Documents, such Secured Swap Agreements or such Secured Treasury Management Agreements, or against any other Person under any other guarantee of, or security for, any of the Obligations.

## 4.03 Reinstatement.

The obligations of the Guarantors under this <u>Article IV</u> shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each Lender on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Administrative Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

### 4.04 Certain Additional Waivers.

Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.02 and through the exercise of rights of contribution pursuant to Section 4.06.

#### 4.05 Remedies.

The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Lenders may exercise their remedies thereunder in accordance with the terms thereof.

# 4.06 Rights of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the Obligations and no Guarantor shall exercise such rights of contribution until all Obligations have been paid in full and the Commitments have terminated.

## 4.07 Guarantee of Payment; Continuing Guarantee.

The guarantee in this <u>Article IV</u> is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

# 4.08 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty in this <u>Article IV</u> by any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (a "Specified Loan Party") or the grant of a security interest under the Loan Documents by any such Specified Loan Party, in either case, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this <u>Article IV</u> voidable under applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each applicable Loan Party under this Section shall remain in full force and effect until such time as the Obligations (other than contingent indemnification obligations that survive the termination of this Agreement) have been paid in full and the Commitments have expired or terminated. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

#### ARTICLE V

### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

# **5.01** Conditions of Initial Credit Extension.

This Agreement shall become effective upon and the obligation of each L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

- (a) <u>Loan Documents</u>. Receipt by the Administrative Agent of executed counterparts of this Agreement and the other Loan Documents, each properly executed by a Responsible Officer of the signing Loan Party and, in the case of this Agreement, by each Lender.
- (b) <u>Opinions of Counsel</u>. Receipt by the Administrative Agent of favorable opinions of legal counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, dated as of the Closing Date, and in form and substance satisfactory to the Administrative Agent (and which shall include, for the avoidance of doubt, a non-contravention opinion with respect to the 1.00% Convertible Notes Documents).
  - (c) <u>Financial Statements</u>. The Administrative Agent shall have received:
  - (i) (A) the Audited Financial Statements and (B) the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended December 31, 2016 and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year of the Company and its Subsidiaries, including the notes thereto, audited by independent public accountants of recognized national standing and prepared in conformity with GAAP;
    - (ii) the Interim Financial Statements; and
  - (iii) financial projections for the Company and its Subsidiaries in form and substance satisfactory to the Lenders for the fiscal year ending December 31, 2019.
- (d) <u>No Material Adverse Change</u>. There shall not have occurred a material adverse change since December 31, 2017 in the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Company and its Subsidiaries, taken as a whole.
- (e) <u>Litigation</u>. There shall not exist any action, suit, investigation or proceeding pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened in any court or before an arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.
- (f) <u>Organization Documents, Resolutions, Etc.</u> Receipt by the Administrative Agent of the following, each of which shall be originals or facsimiles (followed promptly by originals), in form and substance satisfactory to the Administrative Agent and its legal counsel:
  - (i) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and

certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the Closing Date;

- (ii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party; and
- (iii) such documents and certifications as the Administrative Agent may require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its state of organization or formation.

## (g) Perfection and Priority of Liens. Receipt by the Administrative Agent of the following:

- (i) searches of Uniform Commercial Code filings in the jurisdiction of formation of each Loan Party or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens;
- (ii) UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;
- (iii) all certificates evidencing any certificated Equity Interests pledged to the Administrative Agent pursuant to the Pledge Agreement, together with duly executed in blank and undated stock powers attached thereto;
- (iv) searches of ownership of, and Liens on, intellectual property of each Loan Party in the appropriate governmental offices;
- (v) duly executed notices of grant of security interest in the form required by the Security Agreement as are necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the intellectual property of the Loan Parties; and
- (vi) subject to Section 7.16, in the case of any personal property Collateral located at a premises leased by a Loan Party with a fair market value for such Collateral of \$200,000 or more at any one location, such estoppel letters, consents and waivers from the landlords on such real property as may be reasonably required by the Administrative Agent; provided, that, the aggregate fair market value for Collateral located at all such premises for which such estoppel letters, consents and/or waivers shall not be required shall not exceed \$1,000,000 in the aggregate.
- (h) <u>Evidence of Insurance</u>. Receipt by the Administrative Agent of copies of insurance policies or certificates of insurance of the Loan Parties evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming

the Administrative Agent as additional insured (in the case of liability insurance) or Lender's loss payee (in the case of hazard insurance) on behalf of the holders of the Obligations.

- (i) <u>Closing Certificate</u>. Receipt by the Administrative Agent of a certificate signed by a Responsible Officer of the Company certifying that the conditions specified in <u>Sections 5.01(d)</u>, (e) and (l) and <u>Sections 5.02(a)</u> and (b) have been satisfied.
- (j) <u>Solvency Certificate</u>. The Administrative Agent shall have received certification as to the financial condition and Solvency of the Company and its Subsidiaries on the Closing Date on a consolidated basis (after giving effect to the transactions contemplated hereby) from a Responsible Officer of the Company.
- (k) <u>Perfection Certificate</u>. The Administrative Agent shall have received a completed perfection certificate, in form and substance reasonably satisfactory to the Administrative Agent, duly executed by a Responsible Officer of the Company.
- (l) <u>Existing Indebtedness</u>. Receipt by the Administrative Agent of evidence that all existing Indebtedness for borrowed money of the Company and its Subsidiaries (other than Indebtedness permitted to exist pursuant to <u>Section 8.03</u>) shall have been repaid in full and all security interests related thereto shall have been terminated on or prior to the Closing Date.

### (m) KYC Information.

- (i) Upon the reasonable request of any Lender at least five (5) days prior to the Closing Date, the Borrowers shall have provided to such Lender the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least three (3) days prior to the Closing Date.
- (ii) At least five (5) days prior to the Closing Date, if either Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the Administrative Agent and each Lender shall have received, in each case to the extent requested by the Administrative Agent or such Lender, a Beneficial Ownership Certification in relation to such Borrower.
- (n) <u>Fees and Expenses</u>. Receipt by the Administrative Agent, MLPFS and the Lenders of any fees and expenses required to be paid or reimbursed, as the case may be, on or before the Closing Date.
- (o) Attorney Costs. Unless waived by the Administrative Agent, the Company shall have paid all fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, <u>plus</u> such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (<u>provided</u>, <u>that</u>, that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).
- (p) Other. Receipt by the Administrative Agent and the Lenders of such other documents, instruments, agreements and information as requested by the Administrative Agent or any Lender, including, but not limited to, information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), real estate leases, material contracts, debt

agreements, property ownership, environmental matters, contingent liabilities and management of the Company and its Subsidiaries; such information may include, if requested by the Administrative Agent, asset appraisal reports and written audits of accounts receivable, inventory, payables, controls and systems.

Without limiting the generality of the provisions of the last paragraph of Section 10.03, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **5.02** Conditions to all Credit Extensions.

The obligation of each Lender and each L/C Issuer to honor any Request for Credit Extension is subject to the following conditions precedent:

- (a) The representations and warranties of the Company and each other Loan Party contained in <u>Article VI</u> or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all respects as of such earlier date, and except that for purposes of this <u>Section 5.02</u>, the representations and warranties contained in <u>subsections</u> (a) and (b) of <u>Section 6.05</u> shall be deemed to refer to the most recent statements furnished pursuant to <u>clauses</u> (a) and (b), respectively, of <u>Section 7.01</u>.
- (b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.
- (c) The Administrative Agent and, if applicable, the applicable L/C Issuer and/or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.
- (d) In the case of a Letter of Credit to be denominated in an Alternative Currency, such currency remains an Eligible Currency.
- (e) In the case of a Request for Credit Extension requesting a Borrowing of Revolving Loans or Swing Line Loans, the Administrative Agent and each Lender shall have received the Initial Budgets for all of the NY MTA Projects pursuant to Section 7.02(j).

Each Request for Credit Extension submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in <u>Sections 5.02(a)</u> and <u>(b)</u> have been satisfied on and as of the date of the applicable Credit Extension, and the initial Request for Credit Extension requesting a Borrowing of Revolving Loans or Swing Line Loans by the Company shall be a representation and warranty that the condition specified in <u>Section 5.02(e)</u> has been satisfied on and as of the date of the applicable Credit Extension.

#### ARTICLE VI

#### **REPRESENTATIONS AND WARRANTIES**

The Loan Parties represent and warrant to the Administrative Agent and the Lenders that:

#### 6.01 Existence, Qualification and Power.

Each Loan Party (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### 6.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law (including, without limitation, Regulation U or Regulation X issued by the FRB).

# 6.03 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document other than (a) those that have already been obtained and are in full force and effect and (b) filings to perfect the Liens created by the Collateral Documents.

#### 6.04 Binding Effect.

Each Loan Document has been duly executed and delivered by each Loan Party that is party thereto. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms.

# 6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the

Company and its Subsidiaries as of the date thereof, including liabilities for taxes, commitments and Indebtedness.

- (b) The Interim Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Company and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.
- (c) From the date of the Audited Financial Statements to and including the Closing Date, there has been no Disposition by any Loan Party or any Subsidiary, or any Involuntary Disposition, of any material part of the business or property of any Loan Party or any Subsidiary, and no purchase or other acquisition by any of them of any business or property (including any Equity Interests of any other Person) material to any Loan Party or any Subsidiary, in each case, which is not reflected in the foregoing financial statements or in the notes thereto and has not otherwise been disclosed in writing to the Lenders on or prior to the Closing Date.
- (d) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

## 6.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

# 6.07 No Default.

- (a) Neither any Loan Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.
  - (b) No Default has occurred and is continuing.

# 6.08 Ownership of Property; Liens.

Each Loan Party and its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of each Loan Party and its Subsidiaries is subject to no Liens, other than Permitted Liens.

# **Environmental Compliance**.

Except as could not reasonably be expected to have a Material Adverse Effect:

- (a) Each of the Facilities and all operations at the Facilities are in compliance with all applicable Environmental Laws, and there is no violation of any Environmental Law with respect to the Facilities or the Businesses, and there are no conditions relating to the Facilities or the Businesses that could give rise to liability under any applicable Environmental Laws.
- (b) None of the Facilities contains, or has previously contained, any Hazardous Materials at, on or under the Facilities in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, Environmental Laws.
- (c) Neither any Loan Party nor any Subsidiary has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Facilities or the Businesses, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.
- (d) Hazardous Materials have not been transported or disposed of from the Facilities, or generated, treated, stored or disposed of at, on or under any of the Facilities or any other location, in each case by or on behalf of any Loan Party or any Subsidiary in violation of, or in a manner that would be reasonably likely to give rise to liability under, any applicable Environmental Law.
- (e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Loan Parties, threatened, under any Environmental Law to which any Loan Party or any Subsidiary is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to any Loan Party, any Subsidiary, the Facilities or the Businesses.
- (f) There has been no release or threat of release of Hazardous Materials at or from the Facilities, or arising from or related to the operations (including, without limitation, disposal) of any Loan Party or any Subsidiary in connection with the Facilities or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

#### 6.10 Insurance.

The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of such Persons, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates. The insurance coverage of the Loan Parties and their Subsidiaries as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 6.10.

#### **6.11** Taxes.

The Loan Parties and their Subsidiaries have filed all federal and state income and other material tax returns and reports required to be filed, and have paid all federal and state income and other material

taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

#### **6.12 ERISA** Compliance.

- (a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Internal Revenue Code or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Loan Parties, nothing has occurred that would prevent, or cause the loss of, such tax-qualified status.
- (b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (c) (i) No ERISA Event has occurred and neither any Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is sixty percent (60%) or higher and neither any Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below sixty percent (60%) as of the most recent valuation date; (iv) neither any Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither any Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.
- (d) Each Borrower represents and warrants as of the Closing Date that it is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

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#### 6.13 Subsidiaries.

Set forth on Schedule 6.13 is a complete and accurate list as of the Closing Date of each Subsidiary of any Loan Party, together with, with respect to each Subsidiary, (a) its jurisdiction of formation, (b) the number of shares of each class of Equity Interests outstanding, (c) the number and percentage of outstanding shares of each class of owned (directly or indirectly) by any Loan Party or any Subsidiary and (d) the number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto. The outstanding Equity Interests of each Subsidiary of any Loan Party are validly issued, fully paid and non-assessable.

# 6.14 Margin Regulations; Investment Company Act.

- (a) No Borrower is engaged and no Borrower will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than twenty-five percent (25%) of the value of the assets (either of a Borrower only or of such Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 8.01 or Section 8.05 or subject to any restriction contained in any agreement or instrument between such Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 9.01(e) will be margin stock.
- (b) None of any Loan Party, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

#### 6.15 Disclosure.

No report, financial statement, certificate or other information furnished (excluding projections, forward-looking information and information of a general economic or industry nature), whether in writing or orally, by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All projections furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document were prepared in good faith based upon assumptions that were believed by the preparer thereof to be reasonable at the time made, it being understood and agreed that such projections are not a guarantee of financial performance and actual results may differ from the projections and such differences may be material. As of the Closing Date, the information included in any Beneficial Ownership Certification is true and correct in all respects.

#### 6.16 Compliance with Laws.

Each Loan Party and each Subsidiary is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

# 6.17 Intellectual Property; Licenses, Etc.

Each Loan Party and its Subsidiaries own, or possess the legal right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses. Set forth on Schedule 6.17 is a list of all IP Rights registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office and owned by each Loan Party as of the Closing Date. Except for such claims or infringements, as applicable, that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) no claim has been asserted and is pending by any Person challenging or questioning the use of any IP Rights or the validity or effectiveness of any IP Rights, nor does any Loan Party know of any such claim, and (b) the use of any IP Rights by any Loan Party or any of its Subsidiaries or the granting of a right or a license in respect of any IP Rights from any Loan Party or any of its Subsidiaries does not infringe on the rights of any Person. As of the Closing Date, none of the IP Rights owned by any of the Loan Parties or any of their Subsidiaries is subject to any licensing agreement or similar arrangement except as set forth on Schedule 6.17.

# 6.18 Solvency.

The Loan Parties are Solvent on a consolidated basis.

# 6.19 Perfection of Security Interests in the Collateral.

The Collateral Documents create valid security interests in, and Liens on, the Collateral purported to be covered thereby, which security interests and Liens are currently perfected security interests and Liens, prior to all other Liens other than Permitted Liens.

#### 6.20 Business Locations.

Set forth on Schedule 6.20(a) is a list of all real property located in the United States that is owned or leased by the Loan Parties as of the Closing Date. Set forth on Schedule 6.20(b) is the taxpayer identification number and organizational identification number of each Loan Party as of the Closing Date. The exact legal name and state of organization of (a) each Borrower is as set forth on the signature pages hereto and (b) each Guarantor is (i) as set forth on the signature pages hereto, (ii) as set forth on the signature pages to the Joinder Agreement pursuant to which such Guarantor became a party hereto or (iii) as may be otherwise disclosed by the Loan Parties to the Administrative Agent in accordance with Section 8.13(c). Except as set forth on Schedule 6.20(c), no Loan Party has during the five (5) years preceding the Closing Date (i) changed its legal name, (ii) changed its state of formation or (iii) been party to a merger, consolidation or other change in structure.

#### 6.21 Labor Matters.

There are no collective bargaining agreements or Multiemployer Plans covering the employees of any Loan Party or any Subsidiary as of the Closing Date and neither any Loan Party nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the five (5) years preceding the Closing Date.

# **6.22** Government Sanctions.

Neither the Company nor any of its Subsidiaries (collectively, the "<u>Company Group</u>") nor, to the knowledge of the Company Group, any director, officer, employee, agent, affiliate or representative of the

Company Group is, or is owned or controlled by an individual or entity that is (a) currently the subject or target of any sanctions administered or enforced by the United States Government (including without limitation, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC")), the United Nations Security Council, the European Union, Her Majesty's Treasury ("HMY"), or other relevant sanctions authority ("Sanctions"), (b) included on OFAC's List of Specially Designated Nationals, HMY's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a country or territory that is the subject of Sanctions.

#### 6.23 PATRIOT Act.

To the extent applicable, the Company and each Subsidiary is in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (b) the PATRIOT Act.

# 6.24 Anti-Corruption Laws.

- (a) To the extent applicable, no part of the proceeds of any Loan or Letter of Credit will be used by any Loan Party, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or any similar laws, rules or regulations issued, administered or enforced by any Governmental Authority having jurisdiction over any of the Company or any other Loan Party.
- (b) The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

# **6.25** No EEA Financial Institution.

No Loan Party is an EEA Financial Institution.

# **ARTICLE VII**

# **AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Loan Parties shall and shall cause each Subsidiary to:

# 7.01 Financial Statements.

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) upon the earlier of the date that is ninety (90) days after the end of each fiscal year of the Company and the date such information is filed with the SEC, a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, and the related consolidated

statements of income or operations, changes in stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and

(b) upon the earlier of the date that is forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Company and the date such information is filed with the SEC, a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal quarter and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Company as fairly presenting the financial condition, results of operations, stockholders' equity and cash flows of the Company and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

#### 7.02 Certificates; Other Information.

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

- (a) concurrently with the delivery of the financial statements referred to in Section 7.01(a), a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Event of Default under Section 8.11 or, if any such Event of Default shall exist, stating the nature and status of such event (it being understood that such requirement may be satisfied by the inclusion of a no-default statement in the footnotes to the financial statements delivered pursuant to Section 7.01(a));
- (b) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Company (including certifications of a Responsible Officer of the Company with respect to (i) the amount of Consolidated Capital Expenditures for the applicable period and (ii) the amount of capital expenditures made during the applicable period with respect to each NY MTA Project);
- (c) no more than thirty (30) days following the end of each fiscal year of the Company (or, in the case of the fiscal year of the Company ended December 31, 2018, no later than March 31, 2019), beginning with the fiscal year ending December 31, 2018, an annual business plan and budget of the Company and its Subsidiaries containing, among other things, pro forma financial statements for each quarter of the current fiscal year;
- (d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the equityholders of any Loan Party, and copies of all annual, regular, periodic and special reports and registration statements which a Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

- (e) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Company by independent accountants in connection with the accounts or books of the Company or any Subsidiary, or any audit of any of them;
- (f) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to <u>Section 7.01</u> or any other clause of this <u>Section 7.02</u>;
- (g) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary;
- (h) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;
- (i) concurrently with the delivery of the financial statements referred to in Section 7.01(a), a certificate of a Responsible Officer of the Company (i) listing (A) all applications by any Loan Party, if any, for Copyrights, Patents or Trademarks (each such term as defined in the Security Agreement) made since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), (B) all issuances of registrations or letters on existing applications by any Loan Party for Copyrights, Patents and Trademarks (each such term as defined in the Security Agreement) received since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), and (C) all Trademark Licenses, Copyright Licenses and Patent Licenses (each such term as defined in the Security Agreement) entered into by any Loan Party since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), and (ii) attaching the insurance binder or other evidence of insurance for any insurance coverage of any Loan Party or any Subsidiary that was renewed, replaced or modified during the period covered by such financial statements;
- (j) on or before March 31, 2019, a budget of the Company and its Subsidiaries for each NY MTA Project in form and substance reasonably satisfactory to the Administrative Agent (each such budget, an "<u>Initial Budget</u>") and thereafter, concurrently with the delivery of the financial statements referred to in <u>Sections 7.01(a)</u> and (b), a budget of the Company and its Subsidiaries for each NY MTA Project, each such budget to include (i) the items set forth in <u>Part A</u> of <u>Schedule 7.02(j)</u> and (ii) at the reasonable request of the Administrative Agent, the items set forth in <u>Part B</u> of <u>Schedule 7.02(j)</u>; and
- (k) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws.

Documents required to be delivered pursuant to <u>Section 7.01(a)</u> or <u>(b)</u> or <u>Section 7.02</u> (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts

such documents, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that: (i) the Company shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Company to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Company shall notify the Administrative Agent and each Lender (by facsimile or e-mail) of the posting of any such documents and provide to the Administrative Agent by e-mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery by a Lender, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Company hereby acknowledges that (a) the Administrative Agent, an Affiliate thereof and/or MLPFS may, but shall not be obligated to, make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Company hereunder (collectively, the "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Person's securities. The Company hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", the Company shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, MLPFS, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Company or its securities for purposes of United States federal and state securities laws (provided, that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (z) the Administrative Agent, any Affiliate thereof and MLPFS shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated as "Public Side Information."

# 7.03 Notices.

- (a) Promptly (and in any event, within two (2) Business Days) notify the Administrative Agent and each Lender of the occurrence of any Default.
- (b) Promptly (and in any event, within five (5) Business Days) notify the Administrative Agent and each Lender of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (c) Promptly (and in any event, within five (5) Business Days) notify the Administrative Agent and each Lender of the occurrence of any ERISA Event.
- (d) Promptly (and in any event, within five (5) Business Days) notify the Administrative Agent and each Lender of any material change in accounting policies or financial reporting practices by the Company or any Subsidiary, including any determination by the Company referred to in Section 2.10(b).

Each notice pursuant to this  $\underbrace{Section 7.03(a)}$  through  $\underbrace{(d)}$  shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the applicable Loan Party has taken and proposes to take with respect thereto. Each notice pursuant to  $\underbrace{Section 7.03(a)}$  shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

# 7.04 Payment of Obligations.

Pay and discharge, as the same shall become due and payable, (a) all federal and state income and other material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Loan Party or such Subsidiary and (b) all material lawful claims which, if unpaid, would by law become a Lien upon its property.

# 7.05 Preservation of Existence, Etc.

- (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 8.04 or 8.05.
- (b) Preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.
- (c) Take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.
- (d) Preserve or renew all of its material registered patents, copyrights, trademarks, trade names and service marks, the non-preservation or non-renewal of which could reasonably be expected to have a Material Adverse Effect.

# 7.06 Maintenance of Properties.

- (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.
- (b) Make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.
  - (c) Use the standard of care typical in the industry in the operation and maintenance of its facilities.

# 7.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of the Company, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Cause the Administrative Agent and its successors and/or assigns to be named as lender's loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any such insurance providing liability coverage or coverage in respect of any Collateral, and cause each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent thirty (30) days' (or such lesser amount as the Administrative Agent may agree) prior written notice before any such policy or policies shall be altered or cancelled.

# 7.08 Compliance with Laws.

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

# 7.09 Books and Records.

- (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.
- (b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

#### 7.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrowers and at such reasonable times during normal business hours and as often as may be desired, upon reasonable advance notice to the Company; provided, that, in the absence of an Event of Default, the Borrowers will not be required to reimburse the expense of more than one such visit in any twelve-month period and only the Administrative Agent on behalf of the Lenders may exercise the right to each such annual visit; provided, further, that, when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

#### 7.11 Use of Proceeds.

Use the proceeds of the Credit Extensions (a) to refinance certain existing Indebtedness, (b) to finance working capital and capital expenditures, (c) for other general corporate purposes and (d) for Permitted Acquisitions; <u>provided</u>, <u>that</u>, in no event shall the proceeds of the Credit Extensions be used in contravention of any Law or of any Loan Document.

# 7.12 Additional Subsidiaries.

(a) Within thirty (30) days after the acquisition or formation of any Subsidiary (including, without limitation, upon the formation of any Subsidiary that is a Delaware Divided

- LLC) (<u>provided</u>, <u>that</u>, Concourse Detroit ceasing to be an Excluded Subsidiary but remaining a Subsidiary shall be deemed to constitute the acquisition of a Subsidiary for all purposes of this <u>Section 7.12</u>), notify the Administrative Agent thereof in writing, together with, with respect to each such Subsidiary, the (i) jurisdiction of formation, (ii) number of shares of each class of Equity Interests outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by the Company or any Subsidiary and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto; and
- (b) Within thirty (30) days (or such later date as the Administrative Agent may agree in its sole discretion) after the acquisition or formation of any Subsidiary (including, without limitation, upon the formation of any Subsidiary that is a Delaware Divided LLC) (provided, that, Concourse Detroit ceasing to be an Excluded Subsidiary but remaining a Subsidiary shall be deemed to constitute the acquisition of a Subsidiary for all purposes of this Section 7.12), if such Subsidiary is a Domestic Subsidiary, cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a Joinder Agreement or such other documents as the Administrative Agent shall deem appropriate for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in Sections 5.01(f) and (g) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (i)), all in form, content and scope satisfactory to the Administrative Agent.

## 7.13 ERISA Compliance.

Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state law; (b) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification; and (c) make all required contributions to any Plan subject to Section 412, Section 430 or Section 431 of the Internal Revenue Code.

#### 7.14 Pledged Assets.

- (a) Equity Interests. Cause (i) 100% of the issued and outstanding Equity Interests of each Domestic Subsidiary and (ii) 65% (or such greater percentage that, due to a change in an applicable Law after the date hereof, (A) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Foreign Subsidiary's United States parent and (B) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each Foreign Subsidiary, in each case, directly owned by a Loan Party to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the holders of the Obligations, pursuant to the terms and conditions of the Collateral Documents, together with opinions of counsel and any filings and deliveries necessary in connection therewith to perfect the security interests therein, all in form and substance satisfactory to the Administrative Agent.
- (b) Other Property. Cause all property (other than Excluded Property) of each Loan Party to be subject at all times to first priority, perfected Liens in favor of the Administrative Agent to secure the Obligations pursuant to the Collateral Documents or, with respect to any such property acquired subsequent to the Closing Date, such other additional security documents as the

Administrative Agent shall request (subject to Permitted Liens) and, in connection with the foregoing, deliver to the Administrative Agent such other documentation as the Administrative Agent may request including filings and deliveries necessary to perfect such Liens, Organization Documents, resolutions, landlord's waivers and favorable opinions of counsel to such Person, all in form, content and scope reasonably satisfactory to the Administrative Agent.

# 7.15 Accounts.

Maintain the principal deposit and operating accounts of each Loan Party (other than Excluded Accounts) with Lenders at all times; provided, that, should any Person cease to be a Lender, the Loan Parties shall have ninety (90) days after such cessation to transfer any applicable accounts to another Lender in accordance with this Section 7.15.

# 7.16 Post-Closing Obligations.

- (a) <u>Landlord Waivers</u>. Use commercially reasonable efforts to deliver to the Administrative Agent not later than the date that is sixty (60) days following the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion) an executed landlord waiver for the leased real property locations of the Loan Parties located at each of (i) 10960 Wilshire Blvd., Los Angeles, California 90024 and (ii) 103 Trade Zone Drive, Columbia, SC 29170.
- (b) Accounts. With respect to each Excluded Account, use commercially reasonable efforts to, not later than the date that is one hundred fifty days (150) days following the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), either (i) deliver to the Administrative Agent an Account Control Agreement with respect to such Excluded Account or (ii) cause (A) the funds in such Excluded Account to be transferred to a deposit account maintained with a Lender and (B) such Excluded Account to be closed (it being understood and agreed that once such funds are so transferred, the deposit account to which such funds have been transferred shall not be an Excluded Account and shall be subject to Section 7.15).
- (c) <u>Good Standing.</u> Deliver to the Administrative Agent not later than the date that is sixty (60) days following the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion) (i) a certificate of status issued by the Secretary of State of the State of California after the Closing Date confirming that Endeka Group, Inc. is on active status in such jurisdiction and (ii) an entity status letter generated after the Closing Date from the Internet website of the Franchise Tax Board of the State of California confirming that Endeka Group, Inc. is in good standing with such Franchise Tax Board.

# ARTICLE VIII

#### **NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

#### 8.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

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- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the date hereof and listed on <u>Schedule 8.01</u> and any renewals or extensions thereof; <u>provided</u>, <u>that</u>: (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by <u>Section 8.03(b)</u>;
- (c) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business; provided, that, such Liens secure only amounts not yet due and payable or, if due and payable, are unfiled and no other action has been taken to enforce the same or are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established;

- (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (f) deposits to secure (i) the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business and (ii) lease obligations under real property leases entered into in the ordinary course of business in amounts not to exceed three (3) months' lease payments under such leases;
- (g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
- (h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 9.01(h);
- (i) Liens securing Indebtedness permitted under <u>Section 8.03(e)</u>; <u>provided</u>, <u>that</u>, (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost (negotiated on an arm's length basis) of the property being acquired on the date of acquisition and (iii) such Liens attach to such property concurrently with or within ninety (90) days after the acquisition thereof;
- (j) leases, subleases, licenses or sublicenses granted to others not interfering in any material respect with the business of any Loan Party or any of their respective Subsidiaries;
- (k) any interest of title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement;

- (1) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;
- (m) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;
- (n) Liens of sellers of goods to the Company and any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;
  - (o) Liens, if any, in favor of the Administrative Agent on Cash Collateral delivered pursuant to Section 2.14(a);
- (p) Liens on property of a Person existing at the time such Person is acquired or merged with or into or consolidated with any Loan Party or Subsidiary after the Closing Date to the extent securing Indebtedness permitted by <u>Section 8.03</u> (and not created in anticipation or contemplation thereof); <u>provided</u>, <u>that</u>, such Liens do not extend to property not subject to such Liens at the time of acquisition (other than improvements thereon and proceeds thereof);
- (q) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods, in each case, in the ordinary course of business; and
- (r) Liens securing Indebtedness incurred pursuant to <u>Section 8.03(g)</u>; <u>provided</u>, <u>that</u>: (i) such Liens do not extend to, or encumber, property which constitutes Collateral and (ii) such Liens extend only to the property of the Foreign Subsidiary incurring such Indebtedness or any of its Subsidiaries that are Foreign Subsidiaries.

#### 8.02 Investments.

Make any Investments, except:

- (a) Investments held by the Company or a Subsidiary in the form of cash or Cash Equivalents;
- (b) Investments existing as of the Closing Date and set forth in <u>Schedule 8.02</u>;
- (c) Investments in any Person that is a Loan Party prior to giving effect to such Investment;
- (d) Investments by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party;
- (e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
  - (f) Guarantees permitted by <u>Section 8.03(f)</u>;

- (g) Permitted Acquisitions;
- (h) Investments by the Company in corporate securities, bank certificates of deposit, U.S. treasury and agency obligations, asset-back securities and money market mutual funds made in accordance with the investment policy of the Company (as such policy is in effect on the Closing Date) approved by the board of directors of the Company (the "Company Investment Policy"), in each case, (i) having a final maturity of not more than twenty-four (24) months and (ii) meeting the applicable requirements of clauses 1 through 6 of Article III of the Company Investment Policy and each other applicable requirement of the Company Investment Policy;
  - (i) other Investments not exceeding \$3,000,000 in the aggregate at any one time outstanding; and
- (j) to the extent constituting Investments, any Capped Call Transactions entered into in connection with Convertible Bond Indebtedness permitted by <u>Section 8.03(n)</u>.

#### 8.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Loan Documents;
- (b) Indebtedness of the Company and its Subsidiaries set forth in <u>Schedule 8.03</u>;
- (c) intercompany Indebtedness permitted under Section 8.02;
- (d) obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Contract; provided, that, (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;
- (e) purchase money Indebtedness (including obligations in respect of Capital Leases or Synthetic Leases) hereafter incurred by the Company or any of its Subsidiaries to finance the purchase of fixed assets, and renewals, refinancings and extensions thereof; provided, that, (i) the total of all such Indebtedness for all such Persons taken together shall not exceed an aggregate principal amount of \$17,500,000 at any one time outstanding; (ii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed; and (iii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;
- (f) Guarantees with respect to Indebtedness of any Loan Party permitted under this <u>Section 8.03</u>; <u>provided</u>, <u>that</u>, if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guaranty on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;
- (g) Indebtedness incurred by Foreign Subsidiaries in an aggregate amount not to exceed \$1,000,000 at any time outstanding;

- (h) unsecured Indebtedness in respect of financing insurance premiums (not to exceed twelve (12) months of premiums) in the ordinary course of business;
- (i) obligations in respect of bid, performance or surety, appeal or similar bonds, completion guarantees, workers' compensation claims, self-insurance obligations and bankers acceptances (other than for an obligation for borrowed money), in each case provided in the ordinary course of business;
- (j) (i) Earn Out Obligations incurred in connection with the consummation of any Permitted Acquisition; <u>provided</u>, <u>that</u>, (A) such Earn Out Obligations are not secured by any Lien on any Collateral, (B) the aggregate amount that could be required to be paid in connection with all such Earn Out Obligations in existence at any one time (assuming satisfaction of all payment criteria in connection therewith to the maximum extent) shall not exceed \$5,000,000 and (C) for the avoidance of doubt, each such Earn Out Obligation must comply with <u>clauses (j)</u> and (<u>k)</u> of the definition of "Permitted Acquisitions" in <u>Section 1.01</u> hereof, (ii) Elauwit Earn Out Obligations; <u>provided</u>, <u>that</u>, (A) such Earn Out Obligations are not secured by any Lien on any Collateral and (B) the aggregate amount that could be required to be paid in connection with all such Earn Out Obligations shall not exceed \$15,000,000 and (iii) the Elauwit Holdback;
- (k) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business, and in respect of netting services, overdraft protection and other similar arrangements in connection with deposit accounts in the ordinary course of business, in each case that is promptly repaid;
- (l) unsecured Indebtedness of the Company and its Subsidiaries not permitted by the foregoing clauses of this Section 8.03, in an aggregate principal amount for all such Indebtedness not to exceed \$2,000,000 at any one time outstanding;
- refinancings, renewals, or extensions of Indebtedness permitted under clauses (b) and (j) of this Section 8.03, so (m) long as: (i) the terms and conditions of such refinancings, renewals or extensions are not, in the Administrative Agent's reasonable judgment, materially more onerous to the Loan Parties taken as a whole than the terms and conditions of the Indebtedness being refinanced, (ii) such refinancings, renewals or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended (other than attributable to the accretion of original issue discount, interest, capitalization of interest or payment premiums in respect of the Indebtedness being refinanced and costs and expenses related thereto and by an amount equal to any existing commitments unutilized thereunder), (iii) such refinancing, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Indebtedness being refinanced, renewed or extended, (iv) no Default or Event of Default exists immediately prior to or after giving effect to such refinancing, renewal or extension, (v) the Company shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving Pro Forma Effect to such refinancing, renewal or extension, (A) the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 as of the most recent fiscal quarter end for which the Company was required to deliver financial statements pursuant to Section 7.01(a) or (b) and (vi) if the Indebtedness being refinanced, renewed or extended is subordinated in right of payment to the Obligations, such refinancing, renewal or extension is subordinated in right of payment to the Obligations on terms, taken as a whole, as favorable in all material respects as those contained in the documents governing the Indebtedness being refinanced, renewed or extended; and

(n) unsecured Convertible Bond Indebtedness outstanding on the Closing Date under the 1.00% Convertible Notes; provided, that, no Subsidiary shall Guarantee such Convertible Bond Indebtedness if such Subsidiary does not also provide a Guarantee of the Obligations. For the avoidance of doubt, nothing in this Section 8.03(n) shall prohibit the conversion of any Convertible Bond Indebtedness, whether into cash, common stock of the Company or any combination thereof.

# 8.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Delaware LLC Division); provided, that, notwithstanding the foregoing provisions of this Section 8.04 but subject to the terms of Sections 7.12 and 7.14, (a) the Company may merge or consolidate with any of its Subsidiaries (other than NY Telecom), provided, that, the Company shall be the continuing or surviving corporation, (b) NY Telecom may merge or consolidate with any of its Subsidiaries, provided, that, NY Telecom shall be the continuing or surviving corporation, (c) any Loan Party (other than a Borrower) may merge or consolidate with any other Loan Party (other than a Borrower), (d) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any Loan Party, provided, that, such Loan Party shall be the continuing or surviving corporation and (e) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any other Subsidiary that is not a Loan Party.

# 8.05 <u>Dispositions</u>.

Make any Disposition unless (a) the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneous with consummation of the transaction and shall be in an amount not less than the fair market value of the property disposed of, (b) such transaction does not involve the sale or other disposition of a minority equity interest in any Subsidiary, (c) no Default or Event of Default has occurred and is continuing both immediately prior to and after giving effect to such Disposition, (d) such transaction does not involve a sale or other disposition of receivables other than receivables owned by or attributable to other property concurrently being disposed of in a transaction otherwise permitted under this Section 8.05, and (e) the aggregate net book value of all of the assets sold or otherwise Disposed of by the Company and its Subsidiaries in all such transactions occurring during any fiscal year of the Company shall not exceed \$2,000,000.

#### 8.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

- (a) each Subsidiary may make Restricted Payments to a Borrower or any Guarantor;
- (b) the Company and each Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person;
- (c) the Company may make any other Restricted Payment (including, for the avoidance of doubt, stock repurchases); provided, that, (i) no Default or Event of Default shall have occurred and be continuing at the time of such Restricted Payment or would result from such Restricted Payment, (ii) the Company shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving Pro Forma Effect to such Restricted Payment, (A) the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 as of the most recent fiscal quarter end for which the Company was required to deliver

financial statements pursuant to <u>Section 7.01(a)</u> or <u>(b)</u> and (B) the Loan Parties would have Liquidity of at least \$25,000,000 and (iii) the aggregate amount of all such Restricted Payments by the Company during any fiscal year of the Company shall not exceed \$20,000,000;

- (d) the Company may enter into Capped Call Transactions in connection with the issuance of Convertible Bond Indebtedness permitted under Section 8.03(n) and satisfy its obligations to pay premiums due upon entering into such transactions;
- (e) the Company may issue shares of its common stock or make cash payments in lieu of issuing fractional shares to satisfy obligations in respect of Convertible Bond Indebtedness;
- (f) the Company may receive shares of its common stock on account of settlements or terminations of any Capped Call Transactions entered into in connection with Convertible Bond Indebtedness; and
  - (g) the Company may make cash settlements of restricted stock units issued to employees of the Company.

# 8.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Company and its Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

# 8.08 Transactions with Affiliates and Insiders.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) advances of working capital to any Loan Party, (b) transfers of cash and assets to any Loan Party, (c) intercompany transactions expressly permitted by Section 8.02, Section 8.03, Section 8.04, Section 8.05 or Section 8.06, (d) normal and reasonable compensation and reimbursement of expenses of officers and directors in the ordinary course of business and (e) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

#### 8.09 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation that (a) encumbers or restricts the ability of any such Person to (i) make Restricted Payments to any Loan Party, (ii) pay any Indebtedness or other obligations owed to any Loan Party, (iii) make loans or advances to any Loan Party, (iv) transfer any of its property to any Loan Party, (v) pledge its property pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) act as a Loan Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i) through (v) above) for (1) this Agreement and the other Loan Documents, (2) any document or instrument governing Indebtedness incurred pursuant to Section 8.03(e); provided, that, any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (3) any Permitted Lien or any document or instrument governing any Permitted Lien; provided, that, any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien or (4) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 8.05 pending the consummation of such sale,

or (b) requires the grant of any security for any obligation if such property is given as security for the Obligations.

#### 8.10 Use of Proceeds.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

#### **8.11** Financial Covenants.

- (a) <u>Consolidated Senior Secured Leverage Ratio</u>. Permit the Consolidated Senior Secured Leverage Ratio as of the end of any fiscal quarter of the Company to be greater than 2.50 to 1.00.
- (b) <u>Consolidated Total Leverage Ratio</u>. Permit the Consolidated Total Leverage Ratio as of the end of any fiscal quarter of the Company to be greater than 4.50 to 1.00.
- (c) <u>Consolidated Fixed Charge Coverage Ratio</u>. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter of the Company to be less than 1.50 to 1.00.
- (d) <u>Cash on Hand</u>. Permit Cash on Hand as of the end of any fiscal quarter of the Company (commencing with the fiscal quarter of the Company in which the Initial Budgets for all NY MTA Projects are delivered pursuant to <u>Section 7.02(j)</u>) to be less than the total of the following calculation, as determined for all NY MTA Projects taken together as of such date: (i) the aggregate amount of all remaining capital expenditures estimated to be made by the Company and its Subsidiaries with respect to each NY MTA Project, <u>minus</u> (ii) the aggregate amount of all such remaining capital expenditures described in the foregoing <u>clause (i)</u> that are to be reimbursed by a third party (other than, for the avoidance of doubt, the Company or a Subsidiary) pursuant to a written agreement between the Company or any Subsidiary and such third party (other than, for the avoidance of doubt, the Company or a Subsidiary), in each case pursuant to the most recent budget for such NY MTA Project delivered pursuant to <u>Section 7.02(j)</u>.

# 8.12 Prepayment of Other Indebtedness, Etc.

Make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any Indebtedness of any Loan Party or any Subsidiary (other than (x) Indebtedness arising under the Loan Documents and (y) the specific refinancings, renewals and extensions permitted pursuant to Section 8.03(m); provided, that, upon the election of any holder of Convertible Bond Indebtedness permitted under Section 8.03(n) to convert its notes thereunder into Equity Interests of the Company in accordance with the terms of the 1.00% Convertible Notes Documents, the Company may settle the applicable conversion in cash, in lieu of issuing Equity Interests of the Company, so long as (i) no Default or Event of Default shall have occurred and be continuing at the time of such cash conversion or would result therefrom and (ii) the Company shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving Pro Forma Effect to such cash conversion, (A) the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 as of the most recent fiscal quarter end for which the Company was required to deliver financial statements pursuant to

<u>Section 7.01(a)</u> or <u>(b)</u> and (B) the Loan Parties would have Liquidity of at least \$50,000,000. Notwithstanding the foregoing, nothing in this Section 8.12 shall prohibit the conversion of any Convertible Bond Indebtedness into common stock of the Company.

# 8.13 Organization Documents; Fiscal Year; Legal Name, State of Formation and Form of Entity; Accounting Changes.

- (a) Amend, modify or change its Organization Documents in a manner adverse to the Lenders.
- (b) Change its fiscal year.
- (c) Without providing ten (10) days' prior written notice to the Administrative Agent, change its name, state of formation or form of organization.
  - (d) Make any change in accounting policies or reporting practices, except as required by GAAP.

# 8.14 Ownership of Subsidiaries.

Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than any Loan Party) to own any Equity Interests of any Subsidiary of any Loan Party (other than the Equity Interests of Concourse Chicago and Concourse Detroit that, in each case, are owned on the Closing Date by a Person who is not a Loan Party), except to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Equity Interests of Foreign Subsidiaries, (b) permit any Loan Party or any Subsidiary of any Loan Party to issue or have outstanding any shares of preferred Equity Interests (other than shares of preferred Equity Interests of Tego Communications, Inc. in existence on the Closing Date that are solely owned by the Company) or (c) create, incur, assume or suffer to exist any Lien on any Equity Interests of any Subsidiary of any Loan Party, except for Permitted Liens.

#### 8.15 Sale Leasebacks.

Enter into any Sale and Leaseback Transaction.

#### 8.16 Sanctions.

Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

# 8.17 <u>Anti-Corruption Laws</u>.

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or other similar anti-corruption legislation in other jurisdictions.

## **8.18** Amendment to Material Contracts.

- (a) Amend or modify any of the terms of the Elauwit Acquisition Documents in any manner that is adverse to any Loan Party or Subsidiary or the Lenders, without the prior written consent of the Administrative Agent.
- (b) Amend or modify the terms of the 1.00% Convertible Notes Documents in any manner that (i) permits or causes the 1.00% Convertible Notes to mature, or requires any scheduled principal payments, scheduled prepayments, scheduled repurchases, scheduled redemptions or scheduled sinking fund or like scheduled principal payments of the 1.00% Convertible Notes, at any time on or prior to the date that is one (1) year after the Maturity Date or (ii) causes such Convertible Bond Indebtedness to include covenants and defaults (other than covenants and defaults customary for convertible indebtedness but not customary for loans) that are, taken as a whole, more restrictive on the Loan Parties than the provisions of this Agreement.

# 8.19 Capital Expenditures.

Make or become legally obligated to make any capital expenditures, except:

- (a) capital expenditures to the extent that the Company or any Subsidiary has entered into a written agreement that requires such capital expenditures to be reimbursed by a third party (other than, for the avoidance of doubt, the Company or a Subsidiary) prior to the date that is nine (9) months after the commencement of such capital expenditures;
- (b) capital expenditures made with respect to any NY MTA Project; <u>provided</u>, <u>that</u>, the aggregate amount of capital expenditures made by the Company and its Subsidiaries with respect to such NY MTA Project, <u>minus</u> the aggregate amount of such capital expenditures that have been reimbursed by a third party (other than, for the avoidance of doubt, the Company or a Subsidiary), shall not exceed, during any fiscal quarter of the Company, fifteen percent (15%) of the amount of capital expenditures estimated to be made by the Company and its Subsidiaries during such fiscal quarter pursuant to the Initial Budget delivered pursuant to Section 7.02(j) for such NY MTA Project; and
  - (c) other capital expenditures in an aggregate amount not to exceed \$60,000,000 during any twelve-month period.

#### ARTICLE IX

# **EVENTS OF DEFAULT AND REMEDIES**

#### 9.01 Events of Default.

Any of the following shall constitute an "Event of Default":

(a) <u>Non-Payment</u>. A Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three (3) Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

- (b) <u>Specific Covenants</u>. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of <u>Section 7.01, 7.02, 7.03, 7.05(a), 7.08, 7.10, 7.11, 7.12, 7.15</u> or <u>7.16</u> or <u>Article VIII</u>; or
- (c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days; or
- (d) <u>Representations and Warranties</u>. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (or, if any such representation, warranty, certification or statement of fact is qualified by materiality or Material Adverse Effect, incorrect or misleading in any respect) when made or deemed made; or
- Cross-Default. (i) Any Loan Party or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded (other than (x) the occurrence or existence of any event or condition that allows holders of 1.00% Convertible Notes to convert such Convertible Bond Indebtedness, and (y) any conversion of 1.00% Convertible Notes in accordance with their terms; provided, that, in the case of either of the foregoing clause (x) or clause (y), such event or condition does not constitute, and such conversion does not result from, any default or event of default by any Loan Party or any Subsidiary thereunder, a "change of control" or a "fundamental change"; provided, further, that, an Event of Default resulting from the immediately preceding proviso shall be deemed cured if subsequent to the occurrence thereof the Company receives from holders of 1.00% Convertible Notes a notice of conversion and provides notice to such holders that the conversion will be settled in shares of common stock of the Company); or (ii) there occurs under any Swap Contract (A) an Early Termination Date (as defined in such Swap Contract) resulting from any event of default under such Swap Contract as to which the Company or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Company or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such Subsidiary as a result thereof is greater than the Threshold Amount; or
- (f) <u>Insolvency Proceedings, Etc.</u> Any Loan Party or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar

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officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

- (g) <u>Inability to Pay Debts; Attachment.</u> (i) Any Loan Party or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or
- (h) <u>Judgments</u>. There is entered against any Loan Party or any Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect;

or

- (i) <u>ERISA</u>. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) a Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or
- (j) <u>Invalidity of Loan Documents</u>. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or
  - (k) <u>Change of Control.</u> There occurs any Change of Control.

# 9.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the commitment of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

- (c) require that the Company Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and
- (d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, that, upon the occurrence of an actual or deemed entry of an order for relief with respect to a Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Company to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

# 9.03 Application of Funds.

After the exercise of remedies provided for in <u>Section 9.02</u> (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to <u>Section 9.02</u>), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

<u>First</u>, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under <u>Article III</u>) payable to the Administrative Agent in its capacity as such;

<u>Second</u>, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers) arising under the Loan Documents and amounts payable under <u>Article III</u>, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans and L/C Borrowings and fees, premiums and scheduled periodic payments, and any interest accrued thereon, due under any Secured Swap Agreement, ratably among the Lenders, the Swap Banks and the L/C Issuers in proportion to the respective amounts described in this clause Third held by them;

<u>Fourth</u>, to (a) payment of that portion of the Obligations constituting accrued and unpaid principal of the Loans and L/C Borrowings, (b) payment of breakage, termination or other payments, and any interest accrued thereon, due under any Secured Swap Agreement, (c) payments of amounts due under any Secured Treasury Management Agreement and (d) Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the Lenders, Swap Banks, Treasury Management Banks and the L/C Issuers in proportion to the respective amounts described in this <u>clause Fourth</u> held by them; and

 $\underline{Last}$ , the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or such Loan Party's assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Treasury Management Agreements and Secured Swap Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Treasury Management Bank or Swap Bank, as the case may be (other than, in each case, the Administrative Agent or its Affiliate). Each Treasury Management Bank or Swap Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article X for itself and its Affiliates as if a "Lender" party hereto.

#### ARTICLE X

# **ADMINISTRATIVE AGENT**

# 10.01 Appointment and Authority.

- (a) Each of the Lenders and each L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither any Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Document (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.
- (b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (in its capacities as a Lender, Swing Line Lender (if applicable), potential Swap Banks and potential Treasury Management Banks) and each L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 10.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled

to the benefits of all provisions of this <u>Article X</u> and <u>Article XI</u> (including <u>Section 11.04(c)</u>, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

# 10.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

# 10.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and its Related Parties:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided, that, the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 9.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrowers, a Lender or an L/C Issuer.

Neither the Administrative Agent nor any of its Related Parties shall have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

# 10.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### 10.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

# 10.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been appointed by the Required Lenders

and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

- (b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to <u>clause (d)</u> of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law by notice in writing to the Company and such Person remove such Person as the Administrative Agent and, in consultation with the Company, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "<u>Removal Effective Date</u>"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.
- With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Company to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring Administrative Agent was acting as Administrative Agent and (ii) after such resignation for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any holder of the Obligations and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

Any resignation by or removal of Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation or removal as L/C Issuer and Swing Line Lender. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all of its Letters of Credit outstanding as of the effective date of its resignation as an L/C

Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Company of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

# 10.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

#### 10.08 No Other Duties; Etc.

Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers, syndication agents, documentation agents or co-agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

# 10.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations (other than obligations under Swap Contracts or Treasury Management Agreements to which the Administrative Agent is not a party) that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the

Administrative Agent under Sections 2.03(h) and (i), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The holders of the Obligations hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the holders of the Obligations shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided, that, any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a)(i) through (iv) of Section 11.01 of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any holder of the Obligations or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any holder of the Obligations or any acquisition vehicle to take any further action.

#### 10.10 Collateral and Guaranty Matters.

Each Lender (including in its capacities as a potential Treasury Management Bank and a potential Swap Bank) and each L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion:

- (a) to release any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other Disposition permitted hereunder or under any other Loan Document or any Involuntary Disposition, or (iii) as approved in accordance with Section 11.01;
- (b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by <u>Section 8.01(i)</u>; and
- (c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty, pursuant to this <u>Section 10.10</u>.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

#### 10.11 Treasury Management Banks and Swap Banks.

No Treasury Management Bank or Swap Bank that obtains the benefit of Section 9.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article X to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Treasury Management Agreements and Secured Party Designation Notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Treasury Management Bank or Swap Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Treasury Management Agreements and Secured Swap Agreements.

#### 10.12 Lender ERISA Representations.

- (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and MLPFS and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:
  - (i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,
  - (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,
  - (iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or
  - (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.
- (b) In addition, unless <u>sub-clause (i)</u> in the immediately preceding <u>clause (a)</u> is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in <u>sub-clause (iv)</u> in the immediately preceding <u>clause (a)</u>, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and MLPFS and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that none of the Administrative Agent or MLPFS or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

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(c) The Administrative Agent and MLPFS hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## **ARTICLE XI**

#### **MISCELLANEOUS**

# 11.01 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 a Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Company or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that:

- (i) no such amendment, waiver or consent shall:
- (A) extend or increase the Commitment of a Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender whose Commitment is being extended or increased (it being understood and agreed that a waiver of any condition precedent set forth in Section 5.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);
- (B) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal (excluding mandatory prepayments), interest, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of the Commitments hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment or whose Commitments are to be reduced;
- (C) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (i) of the final proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment of principal, interest, fees or other amounts; provided, that, only the consent of the Required Lenders shall be necessary to amend the definition of

"Default Rate" or to waive any obligation of the Company to pay interest or Letter of Credit Fees at the Default Rate;

- (D) change <u>Section 2.13</u> or <u>Section 9.03</u> in a manner that would alter the <u>pro rata</u> sharing of payments required thereby without the written consent of each Lender directly affected thereby;
- (E) change any provision of this <u>Section 11.01(a)</u> or the definition of "Required Lenders" without the written consent of each Lender directly affected thereby;
- (F) except in connection with a Disposition permitted under <u>Section 8.05</u>, release all or substantially all of the Collateral without the written consent of each Lender directly affected thereby; or
- (G) release a Borrower or, except in connection with a merger or consolidation permitted under  $\underline{\text{Section 8.04}}$  or a Disposition permitted under  $\underline{\text{Section 8.05}}$ , all or substantially all of the Guarantors without the written consent of each Lender directly affected thereby, except to the extent the release of any Guarantor is permitted pursuant to  $\underline{\text{Section 10.10}}$  (in which case such release may be made by the Administrative Agent acting alone);
- (ii) unless also signed by the applicable L/C Issuer, no amendment, waiver or consent shall affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it;
- (iii) unless also signed by the Swing Line Lender, no amendment, waiver or consent shall affect the rights or duties of the Swing Line Lender under this Agreement; and
- (iv) unless also signed by the Administrative Agent, no amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document;

provided, further, that, notwithstanding anything to the contrary herein, (i) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (ii) Schedule 2.03 may be amended from time to time by the Company, the Administrative Agent and each L/C Issuer to reflect the L/C Commitments of the L/C Issuers in effect from time to time, (iii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender, (iv) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (v) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context

of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

- Notwithstanding anything herein to the contrary, (x) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, the Company, the other Loan Parties and the relevant Lenders providing such additional credit facilities (i) to add one or more additional credit facilities to this Agreement, to permit the extensions of credit from time to time outstanding hereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the Revolving Loans and the accrued interest and fees in respect thereof and to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and (ii) to change, modify or alter Section 2.13 or Section 9.03 or any other provision hereof relating to the pro rata sharing of payments among the Lenders to the extent necessary to effectuate any of the amendments (or amendments and restatements) enumerated in this clause (x), (y) in order to implement any additional Commitments in accordance with Section 2.02 (f), this Agreement may be amended for such purpose (but solely to the extent necessary to implement such additional Commitments in accordance with Section 2.02(f)) by the Company, the other Loan Parties, the Administrative Agent and the relevant Lenders providing such additional Commitments and (z) if following the Closing Date, the Administrative Agent and the Company shall have jointly identified an inconsistency, obvious error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.
- (c) Notwithstanding anything herein to the contrary, as to any amendment, amendment and restatement or other modifications otherwise approved in accordance with this Section, it shall not be necessary to obtain the consent or approval of any Lender that, upon giving effect to such amendment, amendment and restatement or other modification, would have no Commitment or outstanding Loans so long as such Lender receives payment in full of the principal of and interest accrued on each Loan made by, and all other amounts owing to, such Lender or accrued for the account of such Lender under this Agreement and the other Loan Documents at the time such amendment, amendment and restatement or other modification becomes effective.

#### 11.02 Notices and Other Communications; Facsimile Copies.

- (a) <u>Notices Generally</u>. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in <u>subsection (b)</u> below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:
  - (i) if to the Company or any other Loan Party, the Administrative Agent, an L/C Issuer or the Swing Line Lender, to the address, facsimile number, e-mail address or telephone number specified for such Person on <u>Schedule 11.02</u>; and
  - (ii) if to any other Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative

Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile or e-mail transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) <u>Electronic Communications</u>. Notices and other communications to the Administrative Agent, the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail address and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; <u>provided, that</u>, the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to <u>Article II</u> if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, the L/C Issuers or the Borrowers may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; <u>provided, that,</u> approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided, that, for both clauses (i) and (ii), if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of a Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or any other Information through the Internet or any telecommunications, electronic or other information transmission systems, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross

negligence or willful misconduct of such Agent Party; <u>provided</u>, <u>that</u>, in no event shall any Agent Party have any liability to a Borrower, any other Loan Party, any Lender, any L/C Issuer or any other Person for indirect, special, consequential or punitive damages (as opposed to direct or actual damages).

- (d) Change of Address, Etc. Each Borrower, the Administrative Agent, each L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number or e-mail address for notices and other communications hereunder by notice to the Company, the Administrative Agent, the L/C Issuers and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to a Borrower or its securities for purposes of United States federal or state securities laws.
- (e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notices of Loan Prepayment and Swing Line Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the L/C Issuers, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

#### 11.03 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.01 for the benefit of all the Lenders and the L/C Issuers; provided, that, the

foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that, if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.01 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### 11.04 Expenses; Indemnity; and Damage Waiver.

- Costs and Expenses. The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by MLPFS, the Administrative Agent and their respective Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent and MLPFS) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by an L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by MLPFS, the Administrative Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.
- (b) Indemnification by the Loan Parties. The Loan Parties shall indemnify MLPFS, the Administrative Agent (and any sub-agent thereof), each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including a Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in

connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE; provided, that, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or the breach in bad faith by such Indemnitee of its obligations hereunder, if the Company or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

- Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by them to MLPFS, the Administrative Agent (or any sub-agent thereof), an L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to MLPFS, the Administrative Agent (or any such sub-agent), such L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentages (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided, further, that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against MLPFS, the Administrative Agent (or any such sub-agent), such L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for MLPFS, the Administrative Agent (or any such sub-agent), an L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).
- (d) <u>Waiver of Consequential Damages</u>, <u>Etc.</u> To the fullest extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in <u>subsection (b)</u> above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.
- (e) <u>Payments</u>. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) <u>Survival</u>. The agreements in this Section and the indemnity provisions of <u>Section 11.02(e)</u> shall survive the resignation of the Administrative Agent, any L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### 11.05 Payments Set Aside.

To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### 11.06 Successors and Assigns.

- (a) <u>Successors and Assigns Generally.</u> The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that no Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of <u>subsection (b)</u> of this Section, (ii) by way of participation in accordance with the provisions of <u>subsection (d)</u> of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of <u>subsection (e)</u> of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in <u>subsection (d)</u> of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) <u>Assignments by Lenders</u>. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans (including for purposes of this <u>subsection</u> (b), participations in L/C Obligations and Swing Line Loans) at the time owing to it); <u>provided</u>, that, any such assignment shall be subject to the following conditions:

#### (i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving

effect to such assignments) that equal at least the amount specified in <u>paragraph (b)(i)(B)</u> of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

- (B) in any case not described in <u>subsection (b)(i)(A)</u> of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 in the case of an assignment of Revolving Loans and \$1,000,000 in the case of an assignment of Term Loans unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Company otherwise consents (each such consent not to be unreasonably withheld or delayed); <u>provided</u>, <u>that</u>, this <u>Section 11.06(b)(i)(B)</u> shall not apply to assignments permitted pursuant to Section 10.09;
- (ii) <u>Proportionate Amounts</u>. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's Loans and Commitments, and rights and obligations with respect thereto assigned, except that this <u>clause (ii)</u> shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations in respect of its Revolving Commitment (and the related Revolving Loans thereunder) and its outstanding Term Loans on a non-<u>pro</u> <u>rata</u> basis;
- (iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:
  - (A) the consent of the Company (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that, the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and provided, further, that, the Company's consent shall not be required during the primary syndication of the credit facilities provided herein;
  - (B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any Revolving Commitment if such assignment is to a Person that is not a Lender with a Revolving Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;
  - (C) the consent of the L/C Issuers and the Swing Line Lender shall be required for any assignment in respect of the Revolving Commitments.

- (iv) <u>Assignment and Assumption</u>. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; <u>provided</u>, <u>that</u>, the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; <u>provided</u>, <u>further</u>, <u>that</u>, such processing and recordation fee shall not apply to any assignment permitted pursuant to <u>Section 10.09</u>. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.
- (v) <u>No Assignment to Certain Persons</u>. No such assignment shall be made (A) to the Company or any of the Company's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this <u>clause (B)</u> or <u>(C)</u> to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).
- (vi) <u>Certain Additional Payments</u>. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Administrative Agent, the applicable <u>pro rata</u> share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, any L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full <u>pro rata</u> share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to <u>subsection (c)</u> of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each applicable Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

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- (c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Company and any Lender, at any reasonable time and from time to time upon reasonable prior notice.
- (d) <u>Participations</u>. Any Lender may at any time, without the consent of, or notice to, the Company or the Administrative Agent, sell participations to any Person (other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person), a Defaulting Lender or a Borrower or any Affiliate or Subsidiary of a Borrower) (each, a "<u>Participant</u>") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); <u>provided</u>, <u>that</u>, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the other Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in

connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under <u>Section 11.04(c)</u> without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01(a) that affects such Participant. Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided, that, such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided, that, such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under

the Loan Documents (the "Participant Register"); provided, that, no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

- (e) <u>Certain Pledges</u>. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; <u>provided</u>, <u>that</u>, 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.
- Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty (30) days' notice to the Company and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Company, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Company shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, that, no failure by the Company to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (1) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (2) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

#### 11.07 Treatment of Certain Information; Confidentiality.

(a) <u>Treatment of Confidential Information</u>. Each of the Administrative Agent, the Lenders and each L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over

such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) 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, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to a Loan Party and its obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the a Borrower or its Subsidiaries or the credit facilities provided hereunder, (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, an L/C Issuer and/or the Swing Line Lender to deliver Borrower Materials or notices to the Lenders or (C) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (viii) with the consent of the Company or (ix) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than any Loan Party. For purposes of this Section, "Information" means all information received from a Loan Party or any Subsidiary relating to the Loan Parties or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by such Loan Party or any Subsidiary; provided, that, in the case of information received from a Loan Party or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

(b) <u>Non-Public Information</u>. Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (i) the Information may include material non-public information concerning the Company or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

#### 11.08 Set-off.

If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower or any other Loan Party against any and all of the obligations of such Borrower or such Loan Party now or hereafter existing

under this Agreement or any other Loan Document to such Lender or such L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Loan Party may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or L/C Issuer different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided, that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and L/C Issuer agrees to notify the Company and the Administrative Agent promptly after any such setoff and application; provided, that, the failure to give such notice shall not affect the validity of such setoff and application.

#### 11.09 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### 11.10 Counterparts; Integration; Effectiveness.

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or an L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by facsimile or other electronic transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such facsimile or other electronic transmission shall be promptly followed by such manually executed counterpart.

#### 11.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

#### 11.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuers or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### 11.13 Replacement of Lenders.

If the Company is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Company may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that:

- (a) the Company shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);
- (b) such Lender shall have received payment of an amount equal to one hundred percent (100%) of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under <u>Section 3.04</u> or payments required to be made pursuant to <u>Section 3.01</u>, such assignment will result in a reduction in such compensation or payments thereafter:
  - (d) such assignment does not conflict with applicable Laws; and

(e) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed change, waiver, discharge or termination with respect to any Loan Document, the applicable replacement bank, financial institution or Fund consents to the proposed change, waiver, discharge or termination; provided, that, the failure by such Non-Consenting Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Lender and the mandatory assignment of such Non-Consenting Lender's Commitments and outstanding Loans and participations in L/C Obligations and Swing Line Loans pursuant to this Section 11.13 shall nevertheless be effective without the execution by such Non-Consenting Lender of an Assignment and Assumption.

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 Company to require such assignment and delegation cease to apply.

#### 11.14 Governing Law; Jurisdiction; Etc.

- (a) <u>GOVERNING LAW</u>. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
- SUBMISSION TO JURISDICTION. EACH PARTY HERETO **IRREVOCABLY** (b) AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY OTHER FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST A BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION IN ORDER TO ENFORCE ANY RIGHTS WITH RESPECT TO ANY COLLATERAL.

- (c) <u>WAIVER OF VENUE</u>. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN <u>PARAGRAPH (b)</u> OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.
- (d) <u>SERVICE OF PROCESS</u>. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN <u>SECTION 11.02</u>. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

#### 11.15 Waiver of Right to Trial by Jury.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### 11.16 Electronic Execution of Assignments and Certain Other Documents.

The words "delivery", "execute", "execution", "signed", "signature" and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided, that, notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, further, that, without limiting the foregoing, upon the request of any party hereto, any electronic signature shall be promptly followed by such manually executed counterpart.

#### 11.17 USA PATRIOT Act.

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "PATRIOT Act"), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers in accordance with the Act. The Borrowers shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

#### 11.18 No Advisory or Fiduciary Relationship.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a)(i) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, MLPFS, and the Lenders are arm's-length commercial transactions between the Borrowers, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and, as applicable, its Affiliates (including MLPFS) and the Lenders and their respective Affiliates (collectively, solely for purposes of this Section, the "Lenders") on the other hand, (ii) each of the Borrowers and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) each Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b)(i) the Administrative Agent and its Affiliates (including MLPFS) and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for the Borrowers, the other Loan Parties or any of their respective Affiliates or any other Person and (ii) neither the Administrative Agent, any of its Affiliates (including MLPFS) nor any Lender has any obligation to the Borrowers, the other Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent and its Affiliates (including MLPFS) and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, the other Loan Parties, and their respective Affiliates, and neither the Administrative Agent, any of its Affiliates (including MLPFS) nor any Lender has any obligation to disclose any of such interests to the Borrowers, the other Loan Parties or their respective Affiliates. To the fullest extent permitted by law, each Borrower and each other Loan Party hereby waives and releases, any claims that it may have against the Administrative Agent, any of its Affiliates (including MLPFS) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

#### 11.19 Appointment of Company.

Each of the Guarantors and NY Telecom, in its capacity as a Borrower, hereby appoints the Company to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Company may execute such documents and provide such authorizations on behalf of such Guarantors and NY Telecom as the Company deems appropriate in its sole discretion and each Guarantor and NY Telecom shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice of communication delivered by the Administrative Agent, an L/C Issuer or a Lender to the

Company shall be deemed delivered to each Loan Party and (c) the Administrative Agent, the L/C Issuers, the Swing Line Lender or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Company on behalf of each of the Guarantors and NY Telecom.

#### 11.20 Joint and Several Liability of Borrowers, Etc.

- (a) Each of the Borrowers is accepting joint and several liability hereunder in consideration of the financial accommodation to be provided by the Lenders under this Agreement and the other documents evidencing the Obligations, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of each of the Borrowers to accept joint and several liability for the obligations of each of them.
- (b) Each of the Borrowers jointly and severally hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrower with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them.
- (c) If and to the extent that a Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any obligations under the Loan Documents in accordance with the terms thereof, then in each such event, the other Borrower will make such payment with respect to, or perform, such obligation.
- (d) The obligations of each Borrower under the provisions of this <u>Section 11.20</u> constitute full recourse obligations of such Borrower, enforceable against it to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.
- Except as otherwise expressly provided herein, each Borrower hereby waives notice of acceptance of its joint and (e) several liability, notice of occurrence of any Default (except to the extent notice is expressly required to be given pursuant to the terms of this Agreement), or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or the Lenders under or in respect of any of the Obligations, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of such Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or any failure to act on the part of the Administrative Agent or the Lenders, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder which might, but for the provisions of this Section 11.20, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 11.20, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the obligations of such Borrower under this Section 11.20 shall not be discharged except by performance and then only to the extent of such performance. The obligations of each Borrower under this Section 11.20 shall

not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower or the Lenders. The joint and several liability of the Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any Borrower or the Lenders.

- (f) The provisions of this <u>Section 11.20</u> are made for the benefit of the Administrative Agent and the Lenders and their respective successors and assigns, and may be enforced by any such Person from time to time against any of the Borrowers as often as occasion therefore may arise and without requirement on the part of any Lender first to marshal any of its claims or to exercise any of its rights against any other Borrower or to exhaust any remedies available to it against any other Borrower or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy. The provisions of this <u>Section 11.20</u> shall remain in effect until all the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Lenders upon the insolvency, bankruptcy or reorganization of any of the Borrowers, or otherwise, the provisions of this <u>Section 11.20</u> will forthwith be reinstated and in effect as though such payment had not been made.
- (g) Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents or other documents evidencing the Obligations, the obligations of each Borrower hereunder shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable Debtor Relief Law.

#### 11.21 California Judicial Reference.

Notwithstanding anything to the contrary contained in this Agreement, if any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision; provided, that, at the option of any party to such proceeding, any such issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 11.04, the Loan Parties shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

## 11.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

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- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
- (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

#### 11.23 Entire Agreement.

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

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

BORROWERS:

**GUARANTORS**:

BOINGO WIRELESS, INC.,

a Delaware corporation

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

NEW YORK TELECOM PARTNERS, LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer

ADVANCED WIRELESS GROUP, LLC,

a Florida limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Manager

BOINGO BROADBAND LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

CHICAGO CONCOURSE DEVELOPMENT GROUP, LLC, a

Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Manager

#### CONCOURSE COMMUNICATIONS BALTIMORE, LLC, a

Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### CONCOURSE COMMUNICATIONS CANADA, INC.,

a Delaware corporation

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Treasurer and Secretary

#### CONCOURSE COMMUNICATIONS GROUP, LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Manager

#### CONCOURSE COMMUNICATIONS ILLINOIS, LLC,

an Illinois limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### CONCOURSE COMMUNICATIONS MINNESOTA, LLC, a

Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### CONCOURSE COMMUNICATIONS NASHVILLE, LLC, an

Illinois limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

BOINGO WIRELESS, INC. CREDIT AGREEMENT

#### CONCOURSE COMMUNICATIONS OTTAWA, LLC,

an Illinois limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### CONCOURSE COMMUNICATIONS SSP, LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### CONCOURSE COMMUNICATIONS ST. LOUIS, LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### CONCOURSE HOLDING CO., LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Manager

#### ELECTRONIC MEDIA SYSTEMS, INC.,

a Florida corporation

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Treasurer, and Secretary

ENDEKA GROUP, INC.,

a California corporation

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### INGATE HOLDING, LLC,

an Illinois limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

## INGATE TECHNOLOGIES, LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### OPTI-FI NETWORKS, LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Chief Financial Officer, Treasurer, and Secretary

#### TEGO COMMUNICATIONS, INC.,

a Delaware corporation

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Treasurer, and Secretary

#### BOINGO LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Manager

#### BOINGO MDU, LLC,

a Delaware limited liability company

By: /s/ Peter Hovenier

Name: Peter Hovenier

Title: Manager

ADMINISTRATIVE AGENT:

# BANK OF AMERICA, N.A., as Administrative Agent

By: /s/ Melissa Mullis

Name: Melissa Mullis

Title: Assistant Vice President

LENDERS:

#### BANK OF AMERICA, N.A.,

as a Lender, Swing Line Lender and an L/C Issuer

By: /s/ Sophia Chen

Name: Sophia Chen

Title: Senior Vice President

SILICON VALLEY BANK, as a Lender and an L/C Issuer

By: /s/ Ashley Fairon

Name: Ashley Fairon
Title: Vice President

BANK OF THE WEST,

as a Lender

By: /s/ Bonnie Kehe Name: Bonnie Kehe Title: Director

ZIONS BANCORPORATION, N.A. dba CALIFORNIA BANK & TRUST,

as a Lender

By: /s/ Kevin Kim
Name: Kevin Kim
Title: Vice President

BARCLAYS BANK PLC,

as a Lender

By: /s/ Craig Malloy Name: Craig Malloy Title: Director

> BOINGO WIRELESS, INC. CREDIT AGREEMENT

SCHEDULE 1.01 (EXISTING LETTERS OF CREDIT)

[\*]

\*CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

\*CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

# SCHEDULE 2.01 (COMMITMENTS AND APPLICABLE PERCENTAGES)

Lender	Revolving Commitment	Applicable Percentage of Aggregate Revolving Commitments	Term Loan Commitment	Applicable Percentage of Term Loan Commitments
Bank of America, N.A.	[*]	[*]	[*]	[*]
Silicon Valley Bank	[*]	[*]	[*]	[*]
Bank of the West	[*]	[*]	[*]	[*]
Zions Bancorporation, N.A. dba California Bank & Trust	[*]	[*]	[*]	[*]
Barclays Bank PLC	[*]	[*]	[*]	[*]
Total	\$150,000,000.00	100.000000000%	\$3,500,000.00	100.00000000%

\*CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

# SCHEDULE 2.03 (L/C COMMITMENTS)

L/C Issuer	L/C Commitment
Bank of America, N.A.	[*]
Silicon Valley Bank	[*]

\*CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS

# SCHEDULE 6.10 (INSURANCE)

(See Attached)

Client#: 425629

#### BOINGWIREL

## ACORD.

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MANDDYYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	NAME: [Omitted]					
Marsh & McLennan Agency LLC	PHONE (A/C, No. Ext): [Omitted]					
Marsh & McLennan Ins. Agency LLC	E-MAIL ADDRESS [Omitted]					
1 Polaris Way #300	INSURER(S) AFFORDING	NAIC #				
Aliso Viejo, CA 92656	INSURER A : Barkiny National Insurance Company	38911				
NSURED	INSURER B : Riverport Insurance Company	36684				
Bolngo Wireless, Inc.	INSURER C ; Underwitters at Lloyd's London	15642				
10960 Wilshire Blvd., 23rd Floor Los Angeles, CA 90024	INCLIRER D - Berkley Regional Insurance Company	29580				
	INSURER E:					
	NSURER F:	530				

COVERAGES

CERTIFICATE NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHISTANDING ANY REGULREMENT, TERM OR CONDITION OF ANY CONTRACTOR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NSR TR	TYPE OF INSURANCE	ADDL SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP	LIMIT	S
A	X COMMERCIAL GENERAL LIABILITY  CLAIVIS-MADE X OCCUR  X DED: NIL  GENL AGGREGATE LIMIT APPLIES PER:  POLICY PRO- JECT X LOC  OTHER	x	[Omitted]	07/01/2018	07/01/2019	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea accurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGRE GATE PRODUCTO- COMPTOP AGG	\$1,000,000 \$1,000,000 \$15,000 \$1,000,000 \$2,000,000 \$2,000,000 \$2,000,000
D	ANY AUTO OWNED AUTOS ONLY HRED AUTOS ONLY X AUTOS ONLY AUTOS ONLY X AUTOS ONLY AUTOS ONLY		[Omitted]	07/01/2018	07/01/2019	CUMBINED SINGLE LIMIT (If a socident) BODILY INJURY (Per person) BODILY INJURY (Per socident) PROPERTY DAMAGE (Per socident).	\$1,000,000 \$ 5 \$ \$
•	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION \$\$10,000		[Omitted]	07/01/2018	07/01/2019	EACH OCCURRENCE AGGREGATE	\$25,000,000 \$25,000,000 \$
В	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETORIPARTINER/EXECUTIVE NO PROFERMEMBER EXCLUDED?  [Mandated y In NH] If yes, describe under	N/A	[Omitted]	07/01/2018	07/01/2019	E.L. EACHACODENT  E.L. DISEASE - EA EMPLOYEE	s1,000,000 s1,000,000 s1,000,000
	CYBER / TECH E&O RETENTION (PER CLAIM) - \$50,000		[Omitted]	07/01/2018	07/01/2019	POLICY AGG. \$5,00 SUBLIMITS *SEE DE RETRO DATES *SEE	SC.*

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 161, Additional Remarks Schedule, may be attached if more space is required)
HIRED AUTO PHYSICAL DAMAGE:

COMPREHENSIVE - ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$1,000 DEDUCTIBLE. COLLISION - ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$1,000 DEDUCTIBLE.

CYBER / TECH E&O SUBLIMITS: (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

Bank of America, N.A., as Administrative Agent for the Secured Parties, I.S.A.O.A SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ATIMA, Mail Code NC1-001-05-45 ATTN: MAC legal, 101 N. Tryon St Charlotte, NC 28255-0001

AUTHORIZED REPRESENTATIVE

Musile Credit

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ACORD 25 (2015/03) 1 of 2 The ACORD name and logo are registered marks of ACORD #S3826891/M3826481

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# **DESCRIPTIONS (Continued from Page 1)** PRIVACY NOTIFICATION COSTS - \$5,000,000 REGULATORY DEFENSE & PENALTIES - \$5,000,000 PCI FINES, EXPENSES & COSTS - \$5,000,000 CYBER / TECH E&O RETROACTIVE DATES: BOINGO WIRELESS, INC. - 1/18/2003 ENDEKA GROUP, INC. - 2/21/2013 ELECTRONIC MEDIA SYSTEMS, INC. - 10/31/2013 ADVANCED WIRELESS GROUP, LLC - 10/31/2013 Bank of America, N.A. as Administrative Agent for the Secured Parties, I.S.A.O.A., A.T.I.M.A., is named as additional insured with respects to General Liability per the attached endorsement. Cancellation provisions apply per the attached endorsement.

# NAMED INSURED SCHEDULE

Boingo Wireless, Inc.

Concourse Communications Group, LLC

New York Telecom Partners, LLC

Chicago Concourse Development Group, LLC

Concourse Communications Baltimore, LLC

Concourse Communications Canada, Inc.

Concourse Communications Detroit, LLC

Concourse Communications Minnesota, LLC

Concourse Communications Nashville, LLC

Concourse Communications Ottawa, LLC

Concourse Communications SSP, LLC

Concourse Communications St. Louis, LLC

Concourse Communications UK, Ltd.

Concourse Holding Co., LLC

InGate Holding, LLC

InGate Technologies, LLC

Opti-Fi Networks, LLC

Tego Communications, Inc.

Concourse Communications Illinois, LLC

Boingo Holding Paticipacoes Ltda.

Concourse Telecomunicacoes Brasil Ltda.

Endeka Group, Inc.

Advanced Wireless Group, LLC

Electronic Media Systems, Inc.

Boingo Broadband LLC

Boingo Limited

Boingo LLC

Boingo MDU, LLC

BOINGWIREL

ACORD. EVIDENCE OF COMMER	C	AL	PROPERTY II	NSURANCE	DATE (MM/DD/YYYY)
THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS ET	VIDE	NCE	DOES NOT AFFIRMATIV	ELY OR NEGATIVE	ELY AMEND, EXTEND OR ALTER
THE COVERAGE AFFORDED BY THE POLICIES BELOW. THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE					
PRODUCER NAME, CONTACT PERSON AND ADDRESS LA/C, No, Ext): 949 544-8461			COMPANY NAME AND ADD		NAIC NO: 38911
Marsh & McLennan Agency LLC Marsh & McLennan Ins. Agency LLC 1 Polaris Way #300 Aliso Viejo, CA 92656	Beriday National Insurance Compan				
AX E-MAIL ADDRESS: Nicole.Crudup@marshmma.	com		IF MULTIPLE	COMPANIES, COMPLET	TE SEPARATE FORM FOR EACH
CODE: SUB CODE:		5 ( ) ( ) ( ) ( ) ( ) ( )	POLICY TYPE		н карылынын катана от
AGENCY CUSTOMER ID #: 425629			Commercial Package		
NAMED INSURED AND ADDRESS			LOAN NUMBER		POLICY NUMBER
Boingo Wireless, Inc. 10960 Wilshire Blvd., 23rd Floor					[Omitted]
Los Angeles, CA 90024			EFFECTIVE DATE	EXPIRATION DATE	CONTINUED UNTIL
			07/01/2018	07/01/2019	TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S)			THIS REPLACES PRIOR EVI	DENCE DATED:	
PROPERTY INFORMATION (ACORD 101 may be attached if mor LOCATION/DESCRIPTION 10960 Wilshire Blvd., 23rd Floor Los Angeles, CA 90024	e sp	ace	s required) DBUILDIN	GOR X BUSINESS	PERSONAL PROPERTY
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OT BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE P OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY	HER	DOCU	JMENT WITH RESPECT TO V ESCRIBED HEREIN IS SUBJ CLAIMS.	WHICH THIS EVIDENCE	CE OF PROPERTY INSURANCE MA
	BASK	C	BROAD X SPECIA		
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$					DED: 50,000
	-	NO N			
BUSINESS INCOME RENTAL VALUE	X		If YES, LIMIT: 2,000,000		ual Loss Sustained; # of months
BLANKET COVERAGE 371,673,356	X		If YES, indicate value(s) n		ntified above: \$
TERRORISM COVERAGE			Attach Disclosure Notice /	DEC	
IS THERE A TERRORISM-SPECIFIC EXCLUSION?		X			
IS DOMESTIC TERRORISM EXCLUDED?		X	WATER LINET	_	0.50
LIMITED FUNGUS COVERAGE		X	If YES, LIMIT:		DED:
FUNGUS EXCLUSION (IF "YES", specify organization's form used) REPLACEMENT COST	X				
AGREED VALUE	X				
COINSURANCE	^	Х	If YES. %		
EQUIPMENT BREAKDOWN (If Applicable)	X	^	If YES, LIMIT: 389,870,1	207	DED: 50,000
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bidg	-	X	If YES, LIMIT:		DED:
- Demolition Costs	X	-	If YES, LIMIT: 100,000		DED: 50,000
- Incr. Cost of Construction	X		If YES, LIMIT: 100000		DED: 50,000
EARTH MOVEMENT (If Applicable)		X	IFYES, LIMIT:		DED:
FLOOD (if Applicable)			IFYES, LIMIT:		DED:
WIND/HAIL INCL YES NO Subject to Different Provisions	X		IFYES, LIMIT:		DED: 50,000
NAMED STORM INCL YES NO Subject to Different Provisions	X		If YES, LIMIT:		DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS		X			
CANCELLATION					
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE OF DELIVERED IN ACCORDANCE WITH THE POLICY PROVISION			LED BEFORE THE EXP	RATION DATE TH	EREOF, NOTICE WILL BE
ADDITIONAL INTEREST			I I ENDED BED COMO 100	AME AND ADDRESS	
X CONTRACT OF SALE X LENDER'S LOSS PAYABLE LOSS X MORTGAGEE	PAYE	E	LENDER SERVICING AGENT	AME AND ADDRESS	
NAME AND ADDRESS Bank of America, N.A., as Administrative Agent for the Secured Parties ISAOA, ATIMA					
Attn: MAC Legal Mail Code NC1-001-05-45			AUTHORIZED REPRESENTAT	NE	
101 N. Tryon St. Charlotte, NC 28255-0001			Thurse Crus		
Chanotte, NC 20255-0001	_	anne	10		OPATION All dable received

ENCE OF COMMERCIA	AL PROPERTY INSU	RANCE REMARKS	- Including Spec	ial Conditions (U	lse only if more space	is required)

Policy No.: TCP 7008755 - 12

#### NAMED INSURED EXTENSION

Concourse Communications Group, LLC New York Telecom Partners, LLC Chicago Concourse Development Group, LLC Concourse Communications Baltimore, LLC Concourse Communications Canada, Inc. Concourse Communications Detroit, LLC Concourse Communications Minnesota, LLC Concourse Communications Nashville, LLC Concourse Communications Ottawa, LLC Concourse Communications SSP, LLC Concourse Communications St. Louis, LLC Concourse Communications UK, Ltd. Concourse Holding Co., LLC InGate Holding, LLC InGate Technologies, LLC Opti-Fi Networks, LLC Tego Communications, Inc. Concourse Communications Illinois, LLC Boingo Holding Paticipacoes Ltda. Concourse Telecomunicacoes Brasil Ltda. Endeka Group, Inc. Advanced Wireless Group, LLC Electronic Media Systems, Inc. Boingo Broadband LLC Boingo Limited Boingo LLC

## SCHEDULE 6.13

# (SUBSIDIARIES)

Entity Name	<u>Parent</u>	Jurisdiction of Formation	Number of Shares/Equity Interests Outstanding	Number and Percentage of Outstanding Shares of each Class Owned	Number and Effect (if Exercised) of Outstanding Options, Warrants, Rights of Conversion or Purchase
Advanced Wireless Group, LLC	Boingo Wireless, Inc.  Electronic Media Systems, Inc.	FL	100 Membership Units	10 Membership Units (10%) 90 Membership Units (90%)	N/A
Boingo Broadband LLC	Concourse Communications Group, LLC	DE	100% of Membership Interests	100%	N/A
Boingo Holding Participações Ltda	Boingo Wireless, Inc.  Timeo Participações Ltda	Brazil	100% of equity interests	75% of all equity interests 25% of all equity interests	N/A
Boingo Limited	Boingo Wireless, Inc.	England and Wales	1 Share	1 share (100%)	N/A
Boingo LLC	Concourse Communications Group, LLC	DE	1 Membership Unit	1 Membership Unit (100%)	N/A
Boingo MDU, LLC	Boingo Wireless, Inc.	DE	1 Membership Unit	1 Membership Unit (100%)	N/A

Entity Name	<u>Parent</u>	Jurisdiction of Formation	Number of Shares/Equity Interests Outstanding	Number and Percentage of Outstanding Shares of each Class Owned	Number and Effect (if Exercised) of Outstanding Options, Warrants, Rights of Conversion or Purchase
Chicago Concourse Development Group, LLC	Concourse Communications Group, LLC	DE	100% Membership Interest	70% Membership Interest 30% Membership Interest	N/A
	Rico Computer Enterprises, Inc.			30% Wiembership Interest	
Concourse Communications Baltimore, LLC	Concourse Communications Group, LLC	DE	100% of Membership Interests	100%	N/A
Concourse Communications Canada, Inc.	Concourse Communications Group, LLC	DE	100 shares Common Stock	100 shares Common Stock (100%)	N/A
Concourse Communications Detroit, LLC	Concourse Communications Group, LLC	DE	70,000 Common Units 30,000 Class A Units	70,000 Common Units (100% Common Units) 30,000 Class A Units (100% Class A Units)	N/A
Concourse Communications Group, LLC	Concourse Holding Co., LLC	DE	100% of Membership Interests	100%	N/A
Concourse Communications Illinois, LLC	Concourse Communications Group, LLC	IL	100% of Membership Interests	100%	N/A

Entity Name	<u>Parent</u>	Jurisdiction of Formation	Number of Shares/Equity Interests Outstanding	Number and Percentage of Outstanding Shares of each Class Owned	Number and Effect (if Exercised) of Outstanding Options, Warrants, Rights of Conversion or Purchase
Concourse Communications Minnesota, LLC	Concourse Communications Group, LLC	DE	100% of Membership Interests	100%	N/A
Concourse Communications Nashville, LLC	Concourse Communications Group, LLC	ΙL	100% of Membership Interests	100%	N/A
Concourse Communications Ottawa, LLC	Concourse Communications Group, LLC	IL	100% of Membership Interests	100%	N/A
Concourse Communications SSP, LLC	Concourse Communications Group, LLC	DE	100% of Membership Interests	100%	N/A
Concourse Communications St. Louis, LLC	Concourse Communications Group, LLC	DE	100% of Membership Interests	100%	N/A
Concourse	Concourse	England and	1,000 Ordinary	1,000 Ordinary Shares	N/A

I	Communications UK	Communications Group,	Wales	Shares	(100%)	
	Limited	LLC				

Entity Name	<u>Parent</u>	Jurisdiction of Formation	Number of Shares/Equity Interests Outstanding	Number and Percentage of Outstanding Shares of each Class Owned	Number and Effect (if Exercised) of Outstanding Options, Warrants, Rights of Conversion or Purchase
Concourse Holding Co., LLC	Boingo Wireless, Inc.  Tego Communications, Inc.	DE	10,673.044 Class A Units 3,116.926 Class B Units 14,670,181 Common Units	6,466.918 Class A Units 7,347,129 Common Units (Total owned 50.1%) 4,206.126 Class A Units 3,116.926 Class B Units 7,323,052 Common Units (Total owned 49.9%)	Employee Equity Plan (652,008 Units)
Concourse Telecomunicações Brasil Ltda	Boingo Holding Participações Ltda Timeo Participações Ltda.	Brazil	100% equity interest	99.999% of equity interest .001% of equity interest	N/A
Electronic Media Systems, Inc.	Boingo Wireless, Inc.	FL	100 Shares	100 shares (100%)	N/A
Endeka Group, Inc.	Boingo Wireless, Inc.	CA	1 share	1 share (100%)	N/A

Entity Name	<u>Parent</u>	Jurisdiction of Formation	Number of Shares/Equity Interests Outstanding	Number and Percentage of Outstanding Shares of each Class Owned	Number and Effect (if Exercised) of Outstanding Options, Warrants, Rights of Conversion or Purchase
InGate Holding, LLC	Concourse Communications Group, LLC	IL	100% of Membership Interests	100%	N/A
InGate Technologies, LLC	InGate Holding, LLC	DE	100% of Membership Interests	100%	N/A
New York Telecom Partners, LLC	Concourse Communications Group, LLC	DE	100% of Membership Interests	100%	N/A
Opti-Fi Networks, LLC	Boingo Wireless, Inc.	DE	100% of Membership Interests	100%	N/A
Tego Communications, Inc.	Boingo Wireless, Inc.	DE	60,003 Common Stock 5,323.7 Series A Preferred	60,003 Common Stock (100%) 5,323.7 Series A Preferred (100%)	N/A

## SCHEDULE 6.17 (INTELLECTUAL PROPERTY RIGHTS)

TRADEMARKS, SERVICE MARKS, TRADE NAMES: (VARIOUS OWNERSHIP - SEE BELOW)

# CONCOURSE COMMUNICATIONS GROUP, LLC REGISTERED MARKS

Mark	Registration No.	Registration Date
CC CONCOURSE COMMUNICATIONS GROUP, LLC and Design	2630504	10/8/02
CONCOURSE COMMUNICATIONS	3650218	7/7/09

## ADVANCED WIRELESS GROUP, LLC

REGISTERED MARKS

Mark	Registration No.	Registration Date
AWG-WIFI	4364687	7/9/13

### BOINGO MDU, LLC

REGISTERED MARKS

Mark	Registration No.	Registration Date
STREAMFAST	4654548	12/9/14

### BOINGO WIRELESS, INC.

**REGISTERED MARKS** 

Mark	Registration No.	Registration Date
		Dutt

BOINGO	2873172	8/17/04
BOINGO BROADBAND	4745257	5/26/15
BOINGO and Design	3517731	10/14/08
BOINGO WI-FINDER	4020471	8/30/11
DON'T JUST GO. BOINGO.	3473546	7/22/08
CLOUDNINE 9 MEDIA and Design	4274673	1/15/13
CLOUD9	4330180	5/7/13

# PENDING APPLICATIONS

Mark	Serial No.	Filing Date
BOINGO TV	87454789	5/18/17

### BOINGO WIRELESS, INC.

### **PATENTS**

TITLE	PATENT NO.	ISSUE DATE
INTERNET ACCESS CONTROL USING DEPTH PARAMETERS	9521031	12/13/16
SYSTEMS AND METHODS FOR MAC ADDRESS TRACKING FOR A MOBILE DEVICE	9501777	11/22/16
NETWORK ACCESS POINT DETECTION AND USE	9319967	04/19/16
METHOD AND APPARATUS FOR MONITORING WIRELESS NETWORK ACCESS	9301137	03/29/16
APPARATUS AND METHODS FOR ACCESS SOLUTIONS TO WIRELESS AND WIRED NETWORKS	9264435	02/16/16
SYSTEM, METHOD AND APPARATUS FOR DYNAMIC WIRELESS NETWORK DISCOVERY	8831660	09/09/14
METHOD AND APPARATUS FOR MONITORING WIRELESS NETWORK ACCESS	8767686	07/01/14
METHOD AND APPARATUS FOR ACCESSING NETWORKS BY A MOBILE DEVICE	8234381	07/31/12
METHOD AND APPARATUS FOR ACCESSING NETWORKS BY A MOBILE DEVICE	7483984	01/27/09

## BOINGO WIRELESS, INC.

## PENDING APPLICATIONS

Patent	Appl. No.	Filing Date
SYSTEMS AND METHODS FOR MAC ADDRESS TRACKING FOR	15286497	10/05/16
A MOBILE DEVICE	20170024763	

## BOINGO WIRELESS, INC.

## COPYRIGHTS

TITLE	REG. NO.	REG. DATE
INTRODUCING BOINGO WIRELESS INTERNET SERVICE.	TX0005514024	01/31/02

# SCHEDULE 6.20(a) (LOCATIONS OF REAL PROPERTY)

Location	Leased/Owned	Lessee
10960 Wilshire Blvd., Suites 2300 and 2400	Leased	Boingo Wireless, Inc.
Los Angeles, CA 90024		
10960 Wilshire Blvd., Suite 2300 Storage	Leased	Boingo Wireless, Inc.
Los Angeles, CA 90024		
10960 Wilshire Blvd., Suite 2300 2nd Storage Los Angeles, CA 90024	Leased	Boingo Wireless, Inc.
2150 S. Central Expressway, Suite 200	Leased	Boingo Wireless, Inc.
McKinney, TX 75070		
2215 York Road, Suite 415	Leased	Boingo Wireless, Inc.
Oak Brook, IL 60523		
One Market Street, 36th Floor	Leased	Boingo Wireless, Inc.
San Francisco, CA 94105		
3000 Marcus Avenue, Suite 2E6	Leased	New York Telecom Partners, LLC
Lake Success, NY 11042		
580 Broadway, Suite 901	Leased	Boingo Wireless, Inc.

New York, NY 10012		
180 Meeting Street, Suite 200	Leased	Boingo MDU, LLC
Charleston, SC 29401		
103 Trade Zone Drive, Suites 30C and a portion of 28C	Leased	Boingo MDU, LLC
Columbia, SC 29170		
103 Trade Zone Drive, warehouse space	Leased	Boingo MDU, LLC
Columbia, SC 29170		
Detroit Metro Airport	Leased	Boingo Wireless, Inc.
McNamara Terminal, Building-830-#2559		
Detroit, MI 48242		
1080 Entry Drive	Leased	Boingo Wireless, Inc.
Bensonville, IL 60106		
Olen Pointe Three Points Drive Suits 200	Leased	Boingo Wireless, Inc.
Three Pointe Drive, Suite 200 Brea, CA 92821		
80 S.W. 8th Street, Suite 2000	Leased	Electronic Media Systems Inc
Miami, FL 33130	Leaseu	Electronic Media Systems, Inc.
1.114111, 12 00100		

# SCHEDULE 6.20(b) (TAXPAYER AND ORGANIZATIONAL IDENTIFICATION NUMBERS)

[OMITTED]

# ${\it SCHEDULE~6.20(c)}$ (CHANGES IN LEGAL NAME, STATE OF FORMATION, STRUCTURE)

None.

## SCHEDULE 7.02(j) (NY MTA PROJECT BUDGET REQUIREMENTS)

## With respect to each NY MTA Project:

#### Part A

- Budget Carrier specified/reimbursable expenditures (including capital expenditures)
- Capital expenditures for the Test Period most recently ended
- Total capital expenditures spent with respect to such project (determined as of the last day of the Test Period most recently ended)
- Capital Expenditures anticipated to be spent from the last day of the Test Period most recently ended through project completion

### Part B

- Carrier contract status updates (which can be in form of a customary "management discussion and analysis")
- Build progress updates (which can be in form of a customary "management discussion and analysis")

# SCHEDULE 7.15 (EXCLUDED ACCOUNTS)

[OMITTED]

# 

None.

# SCHEDULE 8.02 (INVESTMENTS EXISTING ON THE CLOSING DATE)

Investments constituting ownership of the Equity Interests in Subsidiaries described on Schedule 6.13.	

# SCHEDULE 8.03 (INDEBTEDNESS EXISTING ON THE CLOSING DATE)

None.

#### SCHEDULE 11.02 (CERTAIN ADDRESSES FOR NOTICES)

#### **LOAN PARTIES:**

Boingo Wireless, Inc.

New York Telecom Partners, LLC (c/o Boingo Wireless, Inc.)

10960 Wilshire Blvd., 23rd Floor

Los Angeles, CA 90024 Attention: [Omitted]

With copies to: (which shall not constitute notice)

Boingo Wireless, Inc.

10960 Wilshire Blvd., 23rd Floor

Los Angeles, CA 90024

Attention: [Omitted]

Chapman and Cutler LLP 595 Market Street, 26th Floor San Francisco, CA 94105 Attention: [Omitted]

Email: [Omitted]

### **ADMINISTRATIVE AGENT:**

#### Administrative Agent's Office

(for advances, payments and Requests for Credit Extensions):

Bank of America, N.A., as Administrative Agent

2380 Performance Drive

Building C, TX2-984-03-23

Richardson, TX 75082

Attention: [Omitted]

Tel: [Omitted]

Facsimile: [Omitted]

Email: [Omitted]

### Remittance Instructions – USD:

Bank of America, N.A.

New York, NY

ABA# [Omitted]

Account No.: [Omitted]

Account Name: [Omitted]

Ref: [Omitted]

## Other Notices as Administrative Agent:

Bank of America, N.A., as Administrative Agent

900 W. Trade St., 6th Floor

NC1-026-06-03

Charlotte, NC 28255 Attention: [Omitted] Tel: [Omitted] Facsimile: [Omitted] Email: [Omitted]

#### L/C ISSUERS:

Bank of America, N.A. Trade Operations 1 Fleet Way

Mail Code: PA6-580-02-30

Scranton, Pa. 18507 Attention: [Omitted] Tel: [Omitted] Facsimile: [Omitted] Email: [Omitted]

#### Remittance Instructions:

Bank of America, N.A. New York, NY

New York, NY
ABA #: [Omitted]
Account #: [Omitted]
Attn: [Omitted]
Ref: [Omitted]

Silicon Valley Bank 1901 Main Street, 3<sup>rd</sup> Floor Santa Monica, CA 90405 Telephone: [Omitted] Email: [Omitted] Attn: [Omitted] [Omitted]

#### **SWING LINE LENDER:**

Bank of America, N.A., as Swing Line Lender

Bank of America, N.A. 2380 Performance Drive Building C, TX2-984-03-23 Richardson, TX 75082 Attention: [Omitted] Tel: [Omitted] Facsimile: [Omitted] Email: [Omitted]

## <u>Remittance Instructions – USD:</u>

Bank of America, N.A. New York, NY ABA# [Omitted] Account No.: [Omitted]
Account Name: [Omitted]

Ref: [Omitted]

#### **EXHIBIT A**

#### FORM OF LOAN NOTICE

Date:	,	

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of February 26, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among Boingo Wireless, Inc., a Delaware corporation (the "Company"), New York Telecom Partners, LLC, a Delaware limited liability company ("NY Telecom" and together with the Company, each a "Borrower" and collectively, the "Borrowers"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent.

The undersigned hereby requests (select one):

☐ A Borrowin	g of [Revolving Loans][the Te	erm Loan]¹	
☐ A conversion	n or continuation of [Revolvin	g Loans][the Term Loan]	
1.	On	(a Business Day).	
2.	In the amount of \$	·	
3.	Comprised of [Type of Loan requested]	·	
4.	For Eurodollar Rate Loans:	with an Interest Period of2	months.

[With respect to such Borrowing, the undersigned Borrower hereby represents and warrants that (i) such request complies with the requirements of Section 2.01 of the Credit Agreement and (ii) each of the conditions set forth in Sections 5.02(a) and (b) [and (e)]<sup>3</sup> of the Credit Agreement has been satisfied on and as of the date of such Borrowing.]

<sup>&</sup>lt;sup>1</sup> As set forth in Section 2.01(a) and (b) of the Credit Agreement, the Company shall be the sole Borrower with respect to Revolving Loans and NY Telecom shall be the sole Borrower with respect to the Term Loan.

<sup>&</sup>lt;sup>2</sup> Per the definition of "Interest Period" in Section 1.01 of the Credit Agreement, one (1), two (2), three (3) or six (6) months (in each case, subject to availability).

<sup>&</sup>lt;sup>3</sup> Bracketed language regarding Section 5.02(e) of the Credit Agreement to be included in the first Request for Credit Extension to be submitted after the Closing Date requesting a Borrowing of Revolving Loans or Swing Line Loans.

Ву:
Name:
Title:]
[NEW YORK TELECOM PARTNERS, LLC,
a Delaware limited liability company
D
By:
Name:
Title:]

[BOINGO WIRELESS, INC., a Delaware corporation

## **EXHIBIT B**

## FORM OF SWING LINE LOAN NOTICE

				Date:,
То:	Bank o	of America, N.A., a	as Swing Line Lender	
Cc:	Bank o	of America, N.A., a	as Administrative Agent	
Ladies	s and Ge	ntlemen:		
otherw among compa	vise mod g Boingo any (" <u>NY</u>	ified in writing from Wireless, Inc., a land Telecom and togotherm.	m time to time, the " <u>Credit Agreer</u> Delaware corporation (the " <u>Compa</u> gether with the Company, each a " <u>F</u>	February 26, 2019 (as amended, restated, extended, supplemented or nent"; the terms defined therein being used herein as therein defined), uny"), New York Telecom Partners, LLC, a Delaware limited liability Borrower" and collectively, the "Borrowers"), the Guarantors from timed Bank of America, N.A., as Administrative Agent.
The u	ndersign	ed hereby requests	a Swing Line Loan:	
	1.	On	(a Business Day	·).
	2.	In the amount of	of\$	
requir	ements of	of Section 2.04(a) of		hereby represents and warrants that (i) such request complies with the ach of the conditions set forth in Sections 5.02(a) and (b) [and (e)] <sup>4</sup> of h Borrowing.
				BOINGO WIRELESS, INC.,
				a Delaware corporation
				By: Name: Title:

<sup>&</sup>lt;sup>4</sup> Bracketed language regarding Section 5.02(e) of the Credit Agreement to be included in the first Request for Credit Extension to be submitted after the Closing Date requesting a Borrowing of Revolving Loans or Swing Line Loans.

#### **EXHIBIT C**

#### FORM OF REVOLVING NOTE

FOR VALUE RECEIVED, the undersigned (the "<u>Company</u>"), hereby promises to pay to \_\_\_\_\_\_\_ or its registered assigns (the "<u>Lender</u>"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Revolving Loan from time to time made by the Lender to the Company under that certain Credit Agreement, dated as of February 26, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "<u>Credit Agreement</u>"; the terms defined therein being used herein as therein defined), among the Company, as a Borrower, New York Telecom Partners, LLC, a Delaware limited liability company, as a Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent.

The Company promises to pay interest on the unpaid principal amount of each Revolving Loan from the date of such Revolving Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Revolving Note is one of the Revolving Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Revolving Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. Revolving Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Revolving Note and endorse thereon the date, amount and maturity of its Revolving Loans and payments with respect thereto.

The Company, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Revolving Note.

THIS REVOLVING NOTE AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS REVOLVING NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the Company has caused this Fully authorized as of the date and at the place first written above.	Revolving Note to be duly executed and delivered by its officer thereunto
	BOINGO WIRELESS, INC., a Delaware corporation
	By: Name: Title:

#### **EXHIBIT D**

#### FORM OF SWING LINE NOTE

FOR VALUE RECEIVED, the undersigned (the "Company"), hereby promises to pay to BANK OF AMERICA, N.A. or its registered assigns (the "Swing Line Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Swing Line Loan from time to time made by the Swing Line Lender to the Company under that certain Credit Agreement, dated as of February 26, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among the Company, as a Borrower, New York Telecom Partners, LLC, a Delaware limited liability company, as a Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent.

The Company promises to pay interest on the unpaid principal amount of each Swing Line Loan from the date of such Swing Line Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made directly to the Swing Line Lender in Dollars in immediately available funds. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Swing Line Note is the Swing Line Note referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Swing Line Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. Swing Line Loans made by the Swing Line Lender shall be evidenced by one or more loan accounts or records maintained by the Swing Line Lender in the ordinary course of business. The Swing Line Lender may also attach schedules to this Swing Line Note and endorse thereon the date, amount and maturity of its Swing Line Loans and payments with respect thereto.

The Company, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Swing Line Note.

THIS SWING LINE NOTE AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS SWING LINE NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the Company has caused this thereunto duly authorized as of the date and at the place first written a	Swing Line Note to be duly executed and delivered by its officer bove.
	BOINGO WIRELESS, INC., a Delaware corporation
	By: Name: Title:

#### **EXHIBIT E**

#### FORM OF TERM NOTE

FOR VALUE RECEIVED, the undersigned ("NY Telecom"), hereby promises to pay to \_\_\_\_\_\_\_ or its registered assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of the Term Loan made by the Lender to NY Telecom under that certain Credit Agreement, dated as of February 26, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among NY Telecom, as a Borrower, Boingo Wireless, Inc., a Delaware corporation, as a Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent.

NY Telecom promises to pay interest on the unpaid principal amount of the Term Loan from the date of such Term Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Term Note is one of the Term Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. The Term Loan made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Term Note and endorse thereon the date, amount and maturity of its Term Loans and payments with respect thereto.

NY Telecom, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term Note.

THIS TERM NOTE AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS TERM NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, NY Telecom has caused this Term Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

	TELECOM PARTNERS, LLC, ited liability company
By: Name: Title:	
EXHIBIT F	
FORM OF COMPLIANCE CERTIF	TICATE
For the fiscal [year][quarter] ended	, 20
I,	reement, dated as of February 26, 2019 (as amended, the "Credit Agreement"; the terms defined therein a Telecom Partners, LLC, a Delaware limited liability electively, the "Borrowers"), the Guarantors from time
[Use following paragraph 1 for fiscal year-end fin	nancial statements:]
[1. Attached hereto as <u>Schedule 1</u> are the year-end audited financial Agreement for the fiscal year of the Company ended as of the above date, together w public accountant required by such Section.]	
[Use following paragraph 1 for fiscal quarter-end f	financial statements:]
[1. Attached hereto as <u>Schedule 1</u> are the unaudited financial statements for the fiscal quarter of the Company ended as of the above date. Such financial state operations, stockholders' equity and cash flows of the Company and its Subsidiaries in period, subject only to normal year-end audit adjustments and the absence of footnotes	ments fairly present the financial condition, results of a accordance with GAAP as at such date and for such
2. The undersigned has reviewed and is familiar with the terms of the C made, a review of the transactions and condition (financial or otherwise) of the Comp covered by the attached financial statements.	
3. A review of the activities of the Company and its Subsidiaries d supervision of the undersigned with a view to determining whether during such fisca and observed all their respective obligations under the Loan Documents, and	
[select one:]	
[to the knowledge of the undersigned during such fiscal period, the Compar covenant and condition of the Loan Documents applicable to it.]	ny and its Subsidiaries performed and observed each
[or:]	
[the following covenants or conditions have not been performed or observed a nature and status:]	and the following is a list of each such Default and its

- 4. The financial covenant analyses and calculation as of the last day of and for the period covered by the financial statements enclosed herewith and set forth on Schedule 2 attached hereto are true and accurate on and as of the date of this Certificate.
- 5. Attached hereto as <u>Schedule 3</u> is a calculation of (i) the amount of Consolidated Capital Expenditures for the applicable period and (ii) the amount of capital expenditures made during the applicable period with respect to each NY MTA Project.
- 6. Attached hereto as <u>Schedule 4</u> is a budget of the Company and its Subsidiaries for each NY MTA Project, in each case, including the budget items set forth on Schedule 7.02(j) to the Credit Agreement.

[Include paragraph 7 for Compliance Certificates delivered in connection with fiscal-year-end statements]

7. Attached hereto as <u>Schedule 5</u> is a list of all (a) applications by any Loan Party for Copyrights, Patents or Trademarks since [the fiscal period covered by the previous fiscal year-end Compliance Certificate] [the Closing Date], (b) issuances of registrations or letters on any such existing applications received since [the fiscal period covered by the previous fiscal year-end Compliance Certificate] [the Closing Date] and (c) all Trademark Licenses, Patent Licenses and Copyright Licenses entered into by any Loan Party since [the fiscal period covered by the previous fiscal year-end Compliance Certificate] [the Closing Date].

[Include paragraph 8 for Compliance Certificates delivered in connection with fiscal-year-end statements]

8. Attached hereto as <u>Schedule 6</u> is the insurance binder or other evidence of insurance for any Loan Party or Subsidiary that was renewed, replaced, or modified during the fiscal period covered by the financial statements delivered herewith.

[Include paragraph 9 for any Compliance Certificates for a fiscal period in which material changes were made in GAAP and/or in the consistent application thereof]

[9. The following is a summary of all material changes in GAAP and in the consistent application thereof since \_\_\_\_\_\_ (the date of the last similar certification or, if none, the Closing Date): [insert summary]]

[signature page follows]

BOINGO WIRELESS, INC.,
a Delaware corporation
By:
Name:
Title:

#### Schedule 1 to Compliance Certificate

Financial Statements for	[Fiscal Quarter l	Ending] [Fiscal Year En	ding], 2	20[	]
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### Schedule 2 to Compliance Certificate

#### **Computation of Financial Covenants**

Capitalized terms used but not defined herein have the meanings set forth in the Credit Agreement. In the event of conflict between the provisions and formulas set forth in this <u>Schedule 2</u> and the provisions and formulas set forth in the Credit Agreement, the provisions and formulas of the Credit Agreement shall prevail.

#### 1. Consolidated Total Leverage Ratio

(B)

(a)

(i)	Funded Indebtedness of the Company and its Subsidiaries on a consolidated basis	

Consolidated Funded Indebtedness as of the last day of the applicable period

all purchase money Indebtedness

- determined in accordance with GAAP (defined as, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP):

  (A) all obligations, whether current or long-term, for borrowed money (including the Obligations) and all obligations of such Person evidenced by bonds, debentures,
  - notes, loan agreements or other similar instruments
  - (C) the principal portion of all obligations under conditional sale or other title retention agreements relating to property purchased by such Person or any Subsidiary thereof (other than customary reservations or retentions of title under agreements
  - (D) all obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments<sup>5</sup>

with suppliers entered into in the ordinary course of business)

(E) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than ninety (90) days after the date on which such trade account payable was created (unless subject to a bona fide dispute)), including, without limitation any Earn Out Obligations (including, for the avoidance of doubt, the Elauwit Earn Out Obligations)

<sup>&</sup>lt;sup>5</sup> For purposes hereof, the amount of any direct obligation arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

		\$					
		(G)	all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference <u>plus</u> accrued and unpaid dividends	\$			
		(H)	all Funded Indebtedness of others secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed	\$			
		(I)	all Guarantees with respect to Funded Indebtedness of the types specified in $\underline{\text{clauses (A)}}$ through $\underline{\text{(H)}}$ above of another Person	\$			
		(J)	all Funded Indebtedness of the types referred to in <u>clauses (A)</u> through <u>(I)</u> above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that such Funded Indebtedness is expressly made non-recourse to such Person	\$			
	(ii) Consolidated Funded Indebtedness $1.(a)(i)(A) + 1.(a)(i)(B) + 1.(a)(i)(C) + 1.(a)(i)(D) + 1.(a)(i)(E) + 1.(a)(i)(F) + 1.(a)(i)(G) + 1.(a)(i)(H) + 1.(a)(i)(I) + 1.(a)(i)(J)$						
(b)	Consoli of four						
	(i)	Consoli	\$				
	The following Such Co						
	(ii)	\$					

<sup>&</sup>lt;sup>6</sup> To the extent included in Consolidated Net Income, any non-cash gains or losses from the mark-to-market of Swap Contracts shall be excluded from the calculation of Consolidated EBITDA.

(iii)	the provision for federal, state, local and foreign income taxes payable by the Company a its Subsidiaries for such period	and \$
(iv)	depreciation and amortization expense for such period	\$
(v)	any non-cash stock-based compensation expense for such period	\$
(vi)	any other non-cash charges, expenses or losses for such period (excluding write-downs of accounts receivable and any other non-cash charges, expenses or losses to the extent representing accruals of or reserves for cash items in any future period or an amortizatio of a prepaid cash expense)	
(vii)	any cash charges for such period that are infrequent and unusual <sup>7</sup>	\$
(viii)	non-recurring transaction fees and expenses for such period in connection with Convertibe Bond Indebtedness incurred in reliance on Section 8.03(n) of the Credit Agreement	ble \$
	llowing <u>clauses (ix)</u> through $\underline{(xi)}$ (without duplication) to the extent included in calculating Consolidated Net Income:	
(ix)	all non-cash income or gains for such period	\$
(x)	federal, state, local and foreign income tax credits of the Company and its Subsidiaries during such period	\$
(xi)	cash gains for such period that are infrequent and unusual	\$
(xii)	Consolidated EBITDA: $1.(b)(i) + 1.(b)(i) +$	». \$
	lidated Total Leverage Ratio (ii) / 1.(b)(xii) Maximu	to 1.00 m Permitted: 4.50 to 1.00

(c)

<sup>&</sup>lt;sup>7</sup> The aggregate amount added pursuant to <u>clause (vii)</u> shall not exceed ten percent (10%) of Consolidated EBITDA (determined prior to giving effect to the add-back in <u>clause (vii)</u>) for such period.

<b>4.</b>	Conse	Consolidated Senior Secured Leverage Ratio												
	(a)	any S	olidated Funded Indebtedness that is secured by a Lien on any property of the Company Subsidiary (other than any Consolidated Funded Indebtedness that is contractually rdinated in right of payment to the Obligations)	y or \$										
	(b)		olidated EBITDA for the period of the four fiscal quarters most recently ended (xii) above]	\$										
	(c)	(c) Consolidated Senior Secured Leverage Ratio 2.(a) / 2.(b)  Maximum												
3.	Conse	olidated	Fixed Charge Coverage Ratio											
	(a)		olidated EBITDA for the period of the four fiscal quarters most recently ended [1.(b) above]	\$										
		(i)	Consolidated Cash Taxes for such period	\$										
		(ii)	The lesser of (x) Consolidated Capital Expenditures for such period and (y) three perc (3%) of Consolidated Revenues for such period	ent \$										
		(iii)	3.(a) - 3.(a)(i) - 3.(a)(ii)	\$										
	(b)		olidated Fixed Charges for the Company and its Subsidiaries for the period of the four fis ers most recently ended	cal										
		(i)	the cash portion of Consolidated Interest Charges for such period <sup>8</sup>	\$										
		(ii)	Consolidated Scheduled Funded Debt Payments for such period	\$										
		(iii)	the amount of cash Restricted Payments made by the Loan Parties during such period (other than the aggregate amount of all 2019 Restricted Stock Unit Settlements made during such period)	\$										
		(iv)	3.(b)(i) + 3.(b)(ii) + 3.(b)(iii)	\$										
	(c)	Cons	olidated Fixed Charge Coverage Ratio 3.(a)(iii) / 3.(b)(iv) Mini	to 1.00 mum Permitted: 1.50 to 1.00										

<sup>&</sup>lt;sup>8</sup> For any calculation of Consolidated Fixed Charges occurring prior to the one-year anniversary of the Closing Date, actual cash Consolidated Interest Charges from the Closing Date through the applicable fiscal quarter end shall be annualized for purposes of calculating the cash portion of Consolidated Interest Charges for the relevant calculation period of four fiscal quarters.

4.	Cash	Cash on Hand <sup>9</sup>												
	(a)	Cash on Hand as of the last day of the applicable period	\$											
	(b)	Aggregate amount of all remaining capital expenditures estimated to be made by the Company and its Subsidiaries with respect to each NY MTA Project pursuant to the applicable budget attached hereto as <a href="Schedule 3">Schedule 3</a>	\$											
	(c)	Aggregate amount of all such remaining capital expenditures described in the foregoing clause (b) that are to be reimbursed by a third party (other than, for the avoidance of doubt, the Company or a Subsidiary) pursuant to a written agreement between the Company or any Subsidiary and such third party (other than, for the avoidance of doubt, the Company or a Subsidiary)	\$											
	(d)	4.(b) - 4.(c)	\$											
	(e)	Does 4.(a) exceed 4.(d)?	[Yes] / [No]											
9 Tob		commencing with the period in which the Initial Budgets for all NY MTA Projects are delivered pursuant to Section	n 7.02(j) of the Credit											

Schedule 3

Consolidated Capital Expenditures and NY MTA Project Capital Expenditures

# Schedule 4

Budgets for each NY MTA Project

# [Schedule 5

Intellectual Property]

[Schedule 6

Insurance]

#### **EXHIBIT G**

#### FORM OF JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement"), dated as of, 20,	is by	and between
, a (the "New Subsidiary"), and BANK OF AMERICA,	N.A., in	its capacity a
Administrative Agent under that certain Credit Agreement (as it may be amended, modified, restated or supplement	ented fror	m time to time
the "Credit Agreement"), dated as of February 26, 2019, by and among BOINGO WIRELESS, INC., a Del	laware co	orporation (th
"Company"), NEW YORK TELECOM PARTNERS, LLC, a Delaware limited liability company ("NY Telecom	i" and to	gether with th
Company, each a "Borrower" and collectively, the "Borrowers"), the Guarantors from time to time party thereto, the	he Lende	rs from time t
time party thereto and Bank of America, N.A., as Administrative Agent. All of the defined terms in the Credit Agr	eement a	re incorporate
herein by reference.		

The Loan Parties are required by Section 7.12 of the Credit Agreement to cause the New Subsidiary to become a "Guarantor". Accordingly, the New Subsidiary hereby agrees as follows with the Administrative Agent, for the benefit of the holders of the Obligations:

- 1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Credit Agreement and a "Guarantor" for all purposes of the Credit Agreement, and shall have all of the obligations of a Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Guarantors contained in the Credit Agreement. Without limiting the generality of the foregoing terms of this <u>paragraph 1</u>, the New Subsidiary hereby jointly and severally together with the other Guarantors, guarantees to each Lender, each Swap Bank, each Treasury Management Bank, and the Administrative Agent, as provided in Article IV of the Credit Agreement, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) strictly in accordance with the terms thereof.
- 2. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Security Agreement, and shall have all the obligations of a "Grantor" (as such term is defined in the Security Agreement) thereunder as if it had executed the Security Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Security Agreement. Without limiting generality of the foregoing terms of this <u>paragraph 2</u>, the New Subsidiary hereby grants to the Administrative Agent, for the benefit of the Secured Parties (as such term is defined in the Security Agreement), a continuing security interest in, and a right of set off against, any and all right, title and interest of the New Subsidiary in and to the Collateral (as such term is defined in the Security Agreement) of the New Subsidiary.
- 3. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Pledge Agreement, and shall have all the obligations of a "Pledgor" (as such term is defined in the Pledge Agreement) thereunder as if it had executed the Pledge Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Pledge Agreement. Without limiting generality of the foregoing terms of this <u>paragraph 3</u>, the New Subsidiary hereby grants, pledges and assigns to the Administrative Agent, for the benefit of the Secured Parties (as such term is defined in the Pledge

Agreement), a continuing security interest in, and a right of set off against, any and all right, title and interest of the New Subsidiary in and to the Pledged Collateral (as such term is defined in the Pledge Agreement) of the New Subsidiary.

- 4. The New Subsidiary hereby represents and warrants to the Administrative Agent, for the benefit of the holders of the Obligations, that:
  - (i) The New Subsidiary's chief executive office, tax payer identification number, organization identification number, and chief place of business are (and for the prior four months have been) located at the locations set forth on <a href="Schedule 1">Schedule 1</a> attached hereto and the New Subsidiary keeps its books and records at such locations.
  - (ii) The location of all owned and leased real property of the New Subsidiary is as shown on <u>Schedule 2</u> attached hereto.
  - (iii) The New Subsidiary's legal name and jurisdiction of organization is as shown in this Agreement and the New Subsidiary has not in the past five (5) years changed its name, been party to a merger, consolidation or other change in structure or used any tradename except as set forth in Schedule 3 attached hereto.
  - (iv) Set forth on Schedule 4 attached hereto is a complete and accurate list of each Subsidiary of the New Subsidiary, together with, with respect to each such Subsidiary of the New Subsidiary, (a) its jurisdiction of organization, (b) the number of shares of each class of Equity Interests outstanding, (c) the number and percentage of outstanding shares of each class owned (directly or indirectly) by such New Subsidiary or any Loan Party and (d) the number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto.
  - (v) The patents, copyrights, and trademarks listed on <u>Schedule 5</u> attached hereto constitute all of the registrations and applications for the patents, copyrights and trademarks owned by the New Subsidiary.
  - (vi) The deposit accounts and securities accounts listed on <u>Schedule 6</u> attached hereto constitute all of the deposit accounts and securities accounts owned by the New Subsidiary.
  - (vii) <u>Schedule 7</u> attached hereto sets forth a complete and accurate list of any Instruments, Documents and Tangible Chattel Paper constituting Collateral (in each case, as such term is defined in the Security Agreement) owned by the New Subsidiary that are required to be pledged and delivered to the Administrative Agent pursuant to the Security Agreement.
  - (viii) Schedule 8 attached hereto sets forth a complete and accurate list of (i) any Pledged Collateral (as such term is defined in the Pledge Agreement) owned by the New Subsidiary, including any certificates or other instruments representing Pledged Collateral that is required to be pledged and delivered to the Administrative Agent pursuant to the Pledge Agreement.

	5.	The	address	of	the	New	Subsidiary	for	purposes	of	all	notices	and	other	communication	ns i	is
			,						, Att	entic	on	of			(Fac	simil	e
No		).															

- 6. The New Subsidiary hereby waives acceptance by the Administrative Agent, any Lender or any other holder of the Obligations of the guaranty by the New Subsidiary under Article IV of the Credit Agreement upon the execution of this Agreement by the New Subsidiary.
- 7. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.
- 8. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[signature pages follow]

and the Administrative Agent, has caused the same to be accepted by i	ts authorized officer, as of the day and year first above written.
	[NEW SUBSIDIARY]
	By: Name: Title:
	Acknowledged and accepted:  BANK OF AMERICA, N.A., as Administrative Agent
	By:Name: Title:

IN WITNESS WHEREOF, the New Subsidiary has caused this Joinder Agreement to be duly executed by its authorized officer,

[Chief Executive Office, Tax Identification Number, Organization Identification Number and Chief Place of Business of New Subsidiary]

[Owned and Leased Real Property]

# Schedule 3

[Prior Names, Mergers, Consolidations, Changes in Structure and Tradenames]

[Subsidiaries]

[Patents, Copyrights, and Trademarks]

[Deposit and Securities Accounts]

[Instruments, Documents and Chattel Paper]

[Pledged Collateral]

#### **Exhibit H**

### FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the "Assignor") and [Insert name of Assignee] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto in the amount[s] and equal to the percentage interest[s] identified below of all the outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, Letters of Credit and Guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clauses (i) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

		[Assignor [is][is not] a Defaulting Lender.]
2.	Assignee:	[and is an Affiliate/Approved Fund of [identify Lender] <sup>10</sup> ]
3.	Borrowers:	BOINGO WIRELESS, INC., a Delaware corporation and NEW YORK TELECOM PARTNERS, LLC, a Delaware limited liability company
4.	Administrative Agent:	Bank of America, N.A., as the administrative agent under the Credit Agreement
5.	Credit Agreement:	Credit Agreement dated as of February 26, 2019, among the Borrowers, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent
<sup>10</sup> Select a	s applicable.	

1.

Assignor:

## 6. Assigned Interest:

Facility Assigned <sup>11</sup>	Aggregate Amount of Commitment/Loans for	Amount of Commitment/Loans	Percentage Assigned of Commitment/Loans <sup>12</sup>
	all Lenders*	Assigned*	Communelly Louis
	\$	\$	%
	\$	\$	%
	\$	\$	%

[7.	Trade Date:	 ]13			
			ED BY ADMINIST THE REGISTER TH	AND WHICH SHAI	L BE THE
		[signatu	re pages follow]		

<sup>&</sup>lt;sup>11</sup>Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Commitment", "Term Loan Commitment", etc.).

<sup>\*</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>&</sup>lt;sup>12</sup>Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>&</sup>lt;sup>13</sup>To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:		
	ASSIGNOR [NAME OF ASSIGNOR]	
	By: Name: Title:	
	ASSIGNEE [NAME OF ASSIGNEE]	
	By: Name: Title:	
[Consented to and]14 Accepted:		
BANK OF AMERICA, N.A., as Administrative Agent		
By Name: Title:		
[Consented to:]15		
[BANK OF AMERICA, N.A., as [an L/C Issuer][and the Swi	ing Line Lender]]	
ByName: Title:		
[SILICON VALLEY BANK, as an L/C Issuer]		
ByName: Title:		

<sup>&</sup>lt;sup>14</sup>To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>15</sup>To be added only if the consent of the Company and/or other parties (<u>e.g.</u>, an L/C Issuer or the Swing Line Lender) is required by the terms of the Credit Agreement.

a Delaw	are corp	oranon		
By				
Name:				
Title:				

[BOINGO WIRELESS, INC.],

ANNEX 1

### STANDARD TERMS AND CONDITIONS FOR

#### ASSIGNMENT AND ASSUMPTION

- 1. Representations and Warranties.
- 1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender, and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Company, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Company, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.
- Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets the requirements to be an assignee under Sections 11.06(b)(iii) and (v) of the Credit Agreement (subject to such consents, if any, as may be required under Section 11.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 7.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee and (viii) as of the Effective Date, it is not (A) an employee benefit plan subject to Title I of ERISA, (B) a plan or account subject to Section 4975 of the Internal Revenue Code, (C) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Internal Revenue Code or (D) a "governmental plan" within the meaning of ERISA, and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and (ii) 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.
- 2. <u>Payments</u>. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and

to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

3. <u>General Provisions</u>. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or other electronic communication shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Assignment and Assumption and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

# FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2019 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Boingo Wireless, Inc., a Delaware corporation (the "Company"), New York Telecom Partners, LLC, a Delaware limited liability company ("NY Telecom" and together with the Company, each a "Borrower" and collectively, the "Borrowers"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iii) it is not a ten percent shareholder of a Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code and (iv) it is not a controlled foreign corporation related to a Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished the Administrative Agent and the Company with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Company and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Company and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]		
By:	- - -	
Date:		

# FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2019 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Boingo Wireless, Inc., a Delaware corporation (the "Company"), New York Telecom Partners, LLC, a Delaware limited liability company ("NY Telecom" and together with the Company, each a "Borrower" and collectively, the "Borrowers"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iii) it is not a ten percent shareholder of a Borrower within the meaning of Section 881 (c)(3)(B) of the Internal Revenue Code, and (iv) it is not a controlled foreign corporation related to a Borrower as described in Section 881 (c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]		
By:		
Title:		

# FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2019 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Boingo Wireless, Inc., a Delaware corporation (the "Company"), New York Telecom Partners, LLC, a Delaware limited liability company ("NY Telecom" and together with the Company, each a "Borrower" and collectively, the "Borrowers"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of a Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to a Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME	OF PARTICIPANT]
By:	
Name:	
Title:	
Date:	, 20

# FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2019 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Boingo Wireless, Inc., a Delaware corporation (the "Company"), New York Telecom Partners, LLC, a Delaware limited liability company ("NY Telecom" and together with the Company, each a "Borrower" and collectively, the "Borrowers"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of a Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to a Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished the Administrative Agent and the Company with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Company and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Company and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]	
Ву:	
Name:	
Title:	
Date:, 20	_

# EXHIBIT J

## FORM OF SECURED PARTY DESIGNATION NOTICE

	Date:,
То:	Bank of America, N.A., as Administrative Agent
Ladie	nd Gentlemen:
" <u>Desi</u> capac Agree	THIS SECURED PARTY DESIGNATION NOTICE is made by, a
	<u>W I T N E S S E T H :</u>
Guara certai	WHEREAS, Boingo Wireless, Inc., a Delaware corporation (the "Company"), New York Telecom Partners, LLC, a Delaware iability company ("NY Telecom" and together with the Company, each a "Borrower" and collectively, the "Borrowers"), thors identified therein, the Lenders identified therein and Bank of America, N.A., as Administrative Agent have entered into the Credit Agreement, dated as of February 26, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the Agreement") pursuant to which certain loans and financial accommodations have been made to the Borrowers;
	WHEREAS, in connection with the Credit Agreement, a Lender or Affiliate of a Lender is permitted to designate its [Treasurment Agreement][Swap Contract] as a ["Secured Treasury Management Agreement"]["Secured Swap Agreement"] under the Collateral Documents;
Agen	WHEREAS, the Credit Agreement requires that the Designor deliver this Secured Party Designation Notice to the Administrativand
	WHEREAS, the Designor has agreed to execute and deliver this Secured Party Designation Notice:
repres requir Desig applic has re decisi agent instru power it will	1. <u>Designation</u> . [] hereby designates the [Treasury Management Agreement] [Swap Contract of on <u>Schedule 1</u> hereto to be a ["Secured Treasury Management Agreement"] ["Secured Swap Agreement"] and herebets and warrants to the Administrative Agent that such [Treasury Management Agreement] [Swap Contract] satisfies all the nents under the Loan Documents to be so designated. By executing and delivering this Secured Party Designation Notice, the reason as provided in the Credit Agreement, hereby agrees to be bound by all of the provisions of the Loan Documents which are let to it as a provider of a [Secured Treasury Management Agreement] [Secured Swap Agreement] and hereby (a) confirms that in its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other tor document furnished pursuant thereto as are delegated to the Administrative Agent by the terms thereof, together with such as are incidental thereto (including, without limitation, the provisions of Section 10.01 of the Credit Agreement), and (c) agrees the bound by the provisions of the Loan Documents and will perform in accordance with its terms all the obligations which by the term thereof to the Loan Documents are

required to be performed by it as a provider of a [Treasury Management Agreement] [Swap Contract]. Without limiting the foregoing, the Designor agrees to indemnify the Administrative Agent as contemplated by Section 11.04(c) of the Credit Agreement.

2. <u>GOVERNING LAW</u>. THIS SECURED PARTY DESIGNATION NOTICE AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS SECURED PARTY DESIGNATION NOTICE AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[signature page follows]

IN WITNESS WHEREOF, the un delivered by their respective officers thereunto			ion Notice to	o be dul	y executed	and
DESIGNOR:						
By:						
Name:						
Title:						
BANK OF AMERICA, N.A., as Administrativ  By:	ve Agent					
Name:						
Title:						

## **EXHIBIT K**

## FORM OF NOTICE OF LOAN PREPAYMENT

ГО:	Bank o	of America, N.A	, as [Administrative Agent][Swing Line Lender]
RE:	otherw among liability	rise modified from Boingo Wirele (**) y company (**) Y	ated as of February 26, 2019 (as amended, restated, amended and restated, extended, supplemented or om time to time, the " <u>Credit Agreement</u> "; the terms defined therein being used herein as therein defined), ess, Inc., a Delaware corporation (the " <u>Company</u> "), New York Telecom Partners, LLC, a Delaware limited <u>Telecom</u> " and together with the Company, each a " <u>Borrower</u> " and collectively, the " <u>Borrowers</u> "), the other eto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent
DATE	:	, 20[	]
the teri forth b	ns of Se		rower hereby notifies the [Administrative Agent][Swing Line Lender] that on, pursuant to e Credit Agreement, the undersigned Borrower intends to prepay the following Loans as more specifically set
		Voluntary pre	payment of [Revolving Loans][the Term Loan] in the following amount(s):
			Eurodollar Rate Loans: \$
			Base Rate Loans: \$18
		Voluntary pre	payment of Swing Line Loans in the following amount(s): \$
( <u>e.g.</u> , "			ted counterpart of a signature page of this notice by fax transmission or other electronic mail transmission ffective as delivery of a manually executed counterpart of this notice.
			[Signature page follows]
l6 Min	imum rei	noinal pranaymar	at required of \$1,000,000 (or, if less, the entire principal amount thereof then outstanding).
			Period" in Section 1.01 of the Credit Agreement, one (1), two (2), three (3) or six (6) months (in each case, subject to

availability).

Ninimum principal prepayment required of \$1,000,000 (or, if less, the entire principal amount thereof then outstanding).

Minimum principal prepayment required of \$500,000 (or, if less, the entire principal amount thereof then outstanding).

written.					ſŖſ	OINGO WI	IRFI FSS	INC		
						Delaware co				
					By Na Tit	me:				
						EW YORK Delaware lin			NERS, LLC, y	
					By Na Tit	me:				
					EXHIBIT	<u>L</u>				
				FORM OF LE	TTER OF (	CREDIT R	EPORT			
TO:	Bank	of America	a, N.A., as A	Administrative A	gent					
RE:	" <u>Cor</u> Guar amer	npany"), as rantors, the nded, modif	a Borrower, Lenders and ied, extende	, New York Tele Bank of Ameri	ecom Partners ica, N.A., as aced, or suppl	s, LLC, a D Administra lemented fr	elaware l tive Agen om time t	imited liab t, an L/C I to time, the	ility company, as ssuer and Swing "Credit Agreen	corporation (the s a Borrower, the Line Lender (as nent"; capitalized
DATE:	[Date	e]								
			name of L/o e Credit Ag		<u>/C Issuer</u> ") h	ereby deliv	ers this re	port to the	Administrative A	Agent, pursuant to
Т	he L/C Issu	er plans to	issue, ameno	d, renew, increas	se or extend the	ne follow L	etter(s) of	Credit on	[insert date].	
L/C No.	Maximum Face Amount	Current Face Amount	Currency	Financials or Performance SBLC	Beneficiary Name	Issuance Date	Expiry Date	Auto Renewal	Date of Amendment	Amount of Amendment
[	The L/C Iss	uar mada a	novment v	gith respect to L	/C No	on line	ort datal i	n the emou	ınt of [\$]	1
				-		_				_
				of such failure],					msert amount c	of such payment]

The undersigned Borrower has caused this Notice of Loan Prepayment to be duly executed and delivered as of the date first above

Set forth in the table below is a description of each Letter of Credit issued by the undersigned and outstanding on the date hereof.

L/C No.	Maximum Face Amount	Current Face Amount	Currency	Financials or Performance SBLC	Beneficiary Name	Issuance Date	Expiry Date	Auto Renewal	Date of Amendment	Amount of Amendment

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

# [L/C ISSUER],

as L/C Issuer

By:	
Name:	
Title:	
-	

(Back To Top)

**Section 3: EX-10.33 (EX-10.33)** 

**Exhibit 10.33** 

## **BOINGO WIRELESS, INC.**

10960 WILSHIRE BLVD., SUITE 800 LOS ANGELES, CA 90024

February 21, 2019

Mike Finley

Dear Mike:

Boingo Wireless, Inc. (the "Company") is pleased to offer you employment on the terms set forth in this letter agreement (the "Agreement").

- 1. **Position**. Commencing on or about March 18, 2019 (your "**Start Date**"), you will become an executive officer of the Company, your title and position will be Chief Executive Officer, reporting to the Board of Directors (the "**Board**"). This is a full-time position and your place of employment will be our headquarters in Los Angeles. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full-time or part-time) that would create a conflict of interest with the Company. During your time as Chief Executive Officer, you will continue to serve on the Board, however, effective as of your Start Date you will no longer serve on any Board committees. Subject to the written advance approval from the Chairman of the Board (which approval will not be unreasonably withheld), you may serve on the boards of directors of other entities, provided that such activity does not violate any Company policy, create a conflict of interest with the Company or otherwise interfere with your ability to perform your responsibilities hereunder. By signing this Agreement, you confirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company in your new role.
- 2. **Cash Compensation**. The Company will pay you an annual base salary at the rate of \$500,000 per year, payable in accordance with the Company's standard payroll schedule. This salary will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time. In addition, you will be eligible to be considered for a cash-incentive bonus for each fiscal year of the Company. The bonus (if any) will be awarded based on objective or subjective criteria established and approved by the Compensation Committee. Your target bonus will be equal to 100% of your annual base salary, measured as of the last day of each fiscal year. Any bonus for a fiscal year will be paid within 2½ months after the close of that fiscal year, but only if you are still employed by the Company at the time of payment. The determinations of the Compensation Committee with respect to your bonus will be final and binding.

In addition, within 30 days of your Start Date, the Company will pay you a bonus of \$300,000, subject to applicable withholdings. If before the second anniversary of your Start Date you terminate your employment with the Company other than as a result of (I) an Involuntary Termination (as defined below) or (II) your death or disability, then you will be required to

reimburse the Company a portion of this bonus, pro-rated based upon the number of complete months you have been employed since your Start Date divided by 24.

## 3. Employee Benefits.

- (a) As a regular employee of the Company, you will be eligible to participate in the Company's standard employee and executive benefits programs, as such are in effect from time to time. In addition, under current Company policy, as an executive officer the paid time-off to which you are entitled is unlimited and does not accrue to the extent unused. The Company will reimburse you for your business expenses subject to its corporate expense reimbursement policy.
- (b) **Relocation**. Although you will travel for Company business from time to time, your primary workplace will be at our headquarters in Los Angeles where we will need you to be physically present on a substantially full-time basis. To facilitate this geographic transition for you, the Company offers you the following benefits, taxable to you as required by applicable law:
- (i) A temporary housing allowance for the first 18 months of your employment of up to an aggregate of \$180,000 (the "**Housing Allowance**"), payable with respect to your securing temporary housing for yourself and your family in proximity to the Company's headquarters, which will paid to you upon your submission of receipts for your temporary housing expenses as well as reasonable commuting expenses for you and your spouse during that period; and
- (ii) A relocation allowance (the "**Relocation Allowance**") of up to \$400,000 (inclusive of any amount paid to you as Housing Allowance), which amount is available to reimburse you for expenses related to relocating your family and household from San Diego to Los Angeles including substantiated expenses such as moving expenses for household goods, storage fees, realtor fees, financing and mortgage closing costs and other reasonable expenses typically incurred in connection with relocating to a new geography. For the sake of clarity, the Relocation Allowance (1) shall not cover loss of value on home sale, (2) shall not be used to cover the actual cost of a new home, and (3) unless otherwise extended by the Board or its Compensation Committee, shall be available to you for a relocation completed within the first two years of your Start Date.

If before the second anniversary of your Start Date you terminate your employment with the Company other than as a result of (I) an Involuntary Termination or (II) your death or disability, then you will be required to reimburse the Company the aggregate amount of the Relocation Allowance (including any portion of such allowance that is the Housing Allowance) that has been paid to you, pro-rated based upon the number of complete months you have been employed since your Start Date divided by 24.

4. **Equity Grants**. Subject to the approval of the Board or its Compensation Committee, you will be granted two equity compensation awards in connection with your being hired as Chief Executive Officer. Each equity award will be for restricted stock units (each, an

"RSU Grant") over a number of shares of the Company's Common Stock with a grant date aggregate value (per the Company's standard award grant methodology) equal to \$1,000,000 and each will have a three-year vesting term. The first RSU Grant (the "Time-Based RSU Grant") will be subject to annual service vesting based upon your continuous service as Chief Executive Officer. The second RSU Grant (the "PRSU") will be subject to vesting upon achievement of certain performance milestones applied to the PRSU grants made to the Company's other executive officers in fiscal year 2019.

5. **Payments Upon Termination**. If your employment with the Company terminates other than as set forth in Section 6 below, then (a) all vesting will cease immediately with respect to your then-outstanding RSU Grants (and other equity awards), and (b) the only amounts payable to you by the Company will be any unpaid base salary due for periods prior to the date of termination of your employment plus any as-yet unpaid benefits that were vested and nonforfeitable prior to termination. Such payment, if any, will be made promptly upon termination and within the period of time mandated by law. If your employment terminates for any reason other than those specified in Section 6 below, the payment described in this Section 5 will be the only payment to which you are entitled in connection with your termination.

#### 6. Severance Benefits.

(a) **General**. If you are subject to an Involuntary Termination, then you will be entitled to the benefits described in this Section 6. However, you will not be entitled to any of the benefits described in this Section 6 unless you have (i) returned all Company property in your possession, (ii) resigned as a member of the Board and of the boards of directors of all of the Company's subsidiaries, to the extent applicable, and (iii) executed a general release of all claims that you may have against the Company or persons affiliated with the Company, in the form provided to you by the Company at the time of your termination, substantially in the form attached as <u>Schedule I</u> (the "**Release**"). You must execute and return the release on or before the date specified by the Company in the Release (the "**Release Deadline**"). The Release Deadline will in no event be later than fifty (50) days after your Separation. If you fail to return the Release on or before the Release Deadline, or if you revoke the Release, then you will not be entitled to the benefits described in this Section 6.

Notwithstanding the foregoing, the Company may immediately discontinue all benefits or revoke any vesting acceleration described in this Section 6 (in addition to pursuing all other legal and equitable remedies) if you breach the Confidentiality Agreement (as defined below) that you will be required to sign in connection with your employment or any other material agreement with the Company that by its terms continues in force following your Separation.

(b) **Termination Not in Connection With Change in Control**. Subject to the requirements set forth in Section 6 (a) above, if you experience an Involuntary Termination before the earlier of three (3) months before or more than eighteen (18) months after a Change in Control, then you will be entitled to the following:

- (i) **Cash Severance**. The Company will pay you on a quarterly basis cash severance (the "**Cash Severance**") in an aggregate amount equal to the sum of (A) your base salary as in effect at the time of your Separation for a period beginning on the day after your Separation and ending on the date eighteen (18) months after your Separation, and (B) an amount equal to 150% of your target annual incentive bonus for the year of your Separation. Subject to the Company's having first received an effective Release pursuant to Section 6(a) above, the salary continuation payments will commence within sixty (60) days after your Separation and, once they commence, will include any unpaid amounts accrued from the date of your Separation. However, if the sixty (60)-day period described in the preceding sentence spans two calendar years, then the payments will in any event begin in the second calendar year.
- (ii) **Pro-Rated Bonus**. The Company will pay you a lump sum cash amount equal to the pro-rated portion of your annual incentive bonus (the "**Pro-Rated Bonus**") for the year of your Separation, based upon achievement of applicable performance objectives as determined by the Board or its Compensation Committee on the same schedule and same basis as paid to other Company executives. Subject to the Company's having first received an effective Release pursuant to Section 6 (a) above, such payment will be made within seventy-five (75 days after the end of the year of your Separation. For the sake of clarity, the pro-ration calculation will be done on a daily basis for the portion of the year during which your employment continued prior to the Separation date.
- (iii) Additional Payment in Lieu of Health Benefit. The Company will cover your cost of medical benefits continuation coverage (the "COBRA Benefits") for you and your eligible dependents with respect to the Company's health insurance plans in which you and your dependents were participating as of your Separation for a period ending on the earlier of (A) eighteen (18) months following your Separation or (B) the date on which you become eligible for medical benefits coverage provided by another employer. This amount will be made on a tax-free basis, if permitted under applicable law in the Company's sole determination, or on a taxable basis to you if not so permitted.
- (iv) **Equity Acceleration**. You will receive (A) twenty four (24) months of additional vesting credit under the service-based vesting conditions applicable to your then-outstanding Time-Based RSU Grants, and (B) pro-rata monthly vesting credit for the period of your continuous service *plus* an additional twenty-four (24) months with respect to the service-based vesting conditions applicable to your then-outstanding PRSUs (in accordance with the Company's standard PRSU award agreement); *provided*, *however*, that in the event acceleration of the settlement date of an RSU Grant would result in additional taxes and penalties under Section 409A of the Code, then the vesting of such award shall accelerate but settlement of the RSU Grant shares (or cash, if applicable) shall occur on the date(s) specified in the agreement governing the RSU Grant.
- (c) **Termination in Connection With Change in Control**. Subject to the requirements set forth in Section 6 (a) above, if you experience an Involuntary Termination

within three (3) months prior to or eighteen (18) months following a Change in Control, then you will be entitled to the Cash Severance, the Pro-Rated Bonus and the COBRA Benefits on the same terms and conditions as described above *plus* you will receive full vesting credit under the service-based vesting conditions applicable to your then-outstanding Time-Based RSU Grants and PRSUs (in accordance with the Company's standard PRSU award agreement); *provided*, *however*, that in the event acceleration of the settlement date of an RSU Grant would result in additional taxes and penalties under Section 409A of the Code, then the vesting of such award shall accelerate but settlement of the RSU Grant shares (or cash, if applicable) shall occur on the date(s) specified in the agreement governing the RSU Grant.

## 7. **Limitation on Payments**.

- (a) **Scope of Limitation**. This Section 7 will apply only if the accounting firm serving as the Company's independent public accountants immediately prior to a Change in Control (the "Accounting Firm") determines that the after-tax value of all Payments (as defined below) to you under Section 6 of this Agreement, taking into account the effect of all federal, state and local income taxes, employment taxes and excise taxes applicable to you (including the excise tax under Section 4999 of the Code), will be greater after the application of this Section 7 than it was before the application of this Section 7. If this Section 7 applies, it will supersede any contrary provision of this Agreement. For purposes of this Section 7, the term "Company" will also include affiliated corporations to the extent determined by the Accounting Firm in accordance with Section 280G(d)(5) of the Code.
- (b) **Basic Rule**. In the event that the Accounting Firm determines that any payment or transfer by the Company to or for your benefit (a "**Payment**") would be nondeductible by the Company for federal income tax purposes because of the provisions concerning "excess parachute payments" in Section 280G of the Code and pursuant to the regulations thereunder, then provided that Subsection (a) results in applicable of this Section 7, the aggregate present value of all Payments will be reduced (but not below zero) to the Reduced Amount. For purposes of this Section 7, the "**Reduced Amount**" will be the amount, expressed as a present value, which maximizes the aggregate present value of the Payments without causing any Payment to be nondeductible by the Company because of Section 280G of the Code.
- Reduction of Payments. If the Accounting Firm determines that any Payment would be nondeductible by the Company because of Section 280G of the Code, and if none of the Payments is subject to Section 409A of the Code, then the reduction will occur in the manner you elect in writing prior to the date of payment; *provided*, *however*, that if the manner elected by you pursuant to this sentence could in the opinion of the Company result in any of the Payments becoming subject to Section 409A of the Code, then the following sentence will instead apply. If any Payment is subject to Section 409A of the Code, or if you fail to elect an order under the preceding sentence, then the reduction will occur in the following order: (i) cancellation of acceleration of vesting of any equity awards for which the exercise price (if any) exceeds the then-fair market value of the underlying Company Common Stock, (ii) reduction of cash payments (with such reduction being applied to the payments in the reverse order in which they would otherwise be made (that is, later payments will be reduced before earlier payments)), and (iii) cancellation of acceleration of vesting of equity awards not covered under (i) above;

*provided, however*, that in the event that acceleration of vesting of equity awards is to be cancelled, such acceleration of vesting will be cancelled in the reverse order of the date of grant of such equity awards (that is, later equity awards will be cancelled before earlier awards).

(d) **Fees of Accounting Firm and Required Data**. The Company will pay all fees, expenses and other costs associated with retaining the Accounting Firm for the purposes described in this Section 7. You and the Company will provide to the Accounting Firm all data in the Company's possession or under its control that the Accounting Firm reasonably requires for the purposes described in this Section 7.

## 8. Further Obligations to the Company.

- (a) **General**. You acknowledge your obligations under, and agree to comply with, all applicable laws and all Company policies in effect at all times and from time to time during your employment with the Company. You further acknowledge and agree that such applicable laws or policies may relate to the general terms of your employment with the Company or to a specific component of your compensation. By way of example, such applicable laws or policies may include any Company recoupment or clawback policy, insider trading policy or code(s) of conduct or other policies adopted under, pursuant to or in light of, or requirements imposed by, the Sarbanes-Oxley Act of 2002 or the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- (b) **Confidential Information**. Like all Company employees, you will be required, as a condition of your employment, to sign the Employee Inventions and Confidentiality Agreement and Mutual Agreement to Arbitrate Claims (the "**Confidentiality Agreement**").
- 9. **Employment Relationship**. Employment with the Company is for no specific period of time. Your employment with the Company remains "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this Agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).
- 10. **Recoupment Policy**. The Company intends to adopt a clawback policy, as and when required by applicable law and/or stock exchange listing standards, governing the Company's obligation to recoup from you incentive compensation paid or provided to you by the Company under specified events and circumstances including upon a restatement of Company financial statements. The Company anticipates that this policy will apply to you while you continue to serve as Chief Executive Officer and for some period following termination of your position as an executive officer of the Company. You acknowledge that it is a condition of your position as Chief Executive Officer that you be subject to the Company's clawback policy as in effect from time to time.

February 21, 2019 Page 7

### 11. Tax Matters.

- (a) All forms of compensation referred to in this Agreement are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law. You are encouraged to obtain your own tax advice regarding your compensation from the Company. You agree that the Company does not have a duty to design its compensation policies in a manner that minimizes your tax liabilities, and you will not make any claim against the Company or its Board related to tax liabilities arising from your compensation.
- (b) **Section 409A**. For purposes of Section 409A of the Code, each payment under Section 6 is hereby designated as a separate payment for purposes of Treasury Regulation 1.409A-2(b)(2). If the Company determines that you are a "specified employee" under Section 409A(a)(2)(B)(i) of the Code at the time of your Separation, then (i) any payments under this Agreement, to the extent that they are not exempt from Section 409A of the Code (including by operation of the next following sentence) and otherwise subject to the taxes imposed under Section 409A(a)(1) of the Code (a "**Deferred Payment**"), will commence

on the first business day following (A) the expiration of the six-month period measured from your Separation or (B) the date of your death and (ii) the installments that otherwise would have been paid prior to such date will be paid in a lump sum when such payments commence. Notwithstanding the foregoing, any amount paid under this Agreement that either (1) satisfies the requirements of the "short-term deferral" rule set forth in Treasury Regulation 1.409A-1(b)(4); or (2) (A) qualifies as a payment made as a result of an involuntary separation from service pursuant to Treasury Regulation 1.409A-1(b)(9)(iii), and (B) does not exceed the Section 409A Limit will not constitute a Deferred Payment. The provisions of this Agreement are intended to comply with, or be exempt from, the requirements of Section 409A of the Code so that none of the payments and benefits to be provided under this Agreement will be subject to the additional tax imposed under Section 409A of the Code, and any ambiguities herein will be interpreted to so comply or be exempt. You and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions as are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to you under Section 409A of the Code. In no event will the Company reimburse you for any taxes that may be imposed on you as result of Section 409A of the Code.

12. **Interpretation, Amendment and Enforcement**. This Agreement constitutes the complete agreement between you and the Company, contains all of the terms of your employment with the Company and supersedes and replaces any prior agreements, representations or understandings (whether written, oral, implied or otherwise) between you and the Company. This Agreement may not be amended or modified, except by an express written agreement signed by both you and a duly authorized officer of the Company. The terms of this Agreement and the resolution of any disputes as to the meaning, effect, performance or validity of this Agreement or arising out of, related to, or in any way connected with, this Agreement, your employment with the Company or any other relationship between you and the Company (the "**Disputes**") will be governed by California law, excluding laws relating to conflicts or choice of law. For purposes of obtaining an injunction or to enforce the arbitration agreement you will sign, you and the Company submit to the exclusive personal jurisdiction of the federal and state courts located in California, but

shall arbitrate any Dispute or any claim related to any Dispute in accordance with the arbitration agreement. By signing this Agreement, you acknowledge and agree that you will no longer be eligible for any benefits or payments except as otherwise expressly provided in this Agreement.

## 13. Successors and Assignment.

- (a) **Company's Successors**. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets will assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any such successor to the Company, or to the Company's business and/or assets, that executes and delivers the assumption agreement described in this Section 13(a) or which becomes bound by the terms of this Agreement by operation of law.
- (b) **Employee's Successors**. The terms of this Agreement and all of your rights hereunder will inure to the benefit of, and be enforceable by, your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. All of your obligations under this Agreement are personal to you and may not be transferred or assigned by you at any time.
  - 14. **Definitions**. The following terms have the meaning set forth below wherever they are used in this Agreement:

"Cause" means the occurrence of any one or more of the following: (a) your conviction by, or entry of a plea of "guilty" or *nolo contendere* in, a court of competent jurisdiction for any crime which constitutes a felony in the jurisdiction involved, (b) your commission of an act of theft or fraud, whether prior or subsequent to the date hereof, upon the Company, (c) your gross negligence in the scope of your services to the Company, (d) your breach of a material provision of any written agreement between you and the Company, (e) your continuing failure to perform assigned duties after receiving written notification of such failure from the Board of Directors with thirty (30) days to cure, unless a request to cure would be futile or (f) your failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested your cooperation.

"Change in Control" means (a) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becoming the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then-outstanding voting securities; (b) the consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; (c) the consummation of a merger or consolidation of the Company with or into any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented

by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; or (d) individuals who are members of the Board of Directors (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the members of the Board of Directors over a period of 12 months; provided, however, that if the appointment or election (or nomination for election) of any new member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Agreement, be considered as a member of the Incumbent Board.

A transaction will not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction. In addition, if a Change in Control constitutes a payment event with respect to any RSU Grant which provides for a deferral of compensation and is subject to Section 409A of the Code, then notwithstanding anything to the contrary in this Agreement, the transaction with respect to such RSU Grant must also constitute a "change in control event" as defined in Treasury Regulation 1.409A-3(i)(5) to the extent required by Section 409A of the Code.

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

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

"Involuntary Termination" means either (a) your Termination Without Cause (other than due to your death or Permanent Disability) or (b) your Resignation for Good Reason.

"Permanent Disability" means your total and permanent disability as defined in Section 22(e)(3) of the Code.

"Resignation for Good Reason" means a Separation as a result of your resignation within 12 months after one of the following conditions has initially come into existence without your express written consent:

- (a) A material reduction of your duties, authority and responsibilities, relative to your duties, authority and responsibilities as in effect immediately prior to such reduction, or the assignment to you of such reduced duties, authority and responsibilities;
  - (b) A reduction in your base salary in effect immediately prior to such reduction;
- (c) A material reduction in the kind or level of employee benefits to which you were entitled immediately prior to such reduction, with the result that your overall benefits package is materially reduced;
- (d) A relocation to a facility or a location more than thirty-five miles from your then-present location that increases your one-way commute; or

(e) The Company's breach of this Agreement, including its failure to obtain the assumption of this Agreement by any successor (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets.

A Resignation for Good Reason will not be deemed to have occurred unless you give the Company written notice of the condition within 90 days after the condition initially comes into existence and the Company fails to remedy the condition within 30 days after receiving your written notice.

"Section 409A Limit" means the lesser of two times: (i) your annualized compensation based upon the annual rate of pay paid to you during the taxable year preceding your taxable year in which your termination of employment occurs, as determined under, and with such adjustments as are set forth in, Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1) and any guidance issued with respect thereto or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which your employment is terminated.

"Separation" means a "separation from service," as defined in the regulations under Section 409A of the Code.

"**Termination Without Cause**" means a Separation as a result of a termination of your employment by the Company without Cause, provided you are willing and able to continue performing services within the meaning of Treasury Regulation 1.409A-1 (n)(1).

\* \* \* \* \*

February 21, 2019 Page 11

	You may	indicate	your a	agreement	with	these	terms	and	accept thi	s offer	by	signing	and	dating	the	enclosed	duplic	ate
original of this	Agreement	and the	Confid	lentiality A	green	nent ai	nd retu	rning	g them to r	ne.								

Very truly yours,

# BOINGO WIRELESS, INC.

By: /s/ David Hagan

Title: Chief Executive Officer

I have read and accept this employment offer:

/s/ Mike Finley

Signature of Mike Finley

Dated: 2/21/2019

Attachment

Exhibit A: Confidentiality Agreement

## SCHEDULE I

## FORM OF RELEASE OF CLAIMS

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# **Section 4: EX-21.1 (EX-21.1)**

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### Exhibit 21.1

## List of Subsidiaries as of December 31, 2018

Name of Subsidiary	Jurisdiction
Advanced Wireless Group, LLC	Florida
Boingo Broadband, LLC.	California
Boingo Holding Participações, Ltda.	Brazil
Boingo Limited	England
Boingo LLC	Delaware
Boingo MDU, LLC	Delaware
Chicago Concourse Development Group, LLC	Delaware
Concourse Communications Baltimore, LLC	Delaware
Concourse Communications Canada, Inc.	Delaware
Concourse Communications Detroit, LLC	Delaware
Concourse Communications Group, LLC	Delaware
Concourse Communications Illinois, LLC	Illinois
Concourse Communications Minnesota, LLC	Delaware
Concourse Communications Nashville, LLC	Illinois
Concourse Communications Ottawa, LLC	Illinois
Concourse Communications SSP, LLC	Delaware
Concourse Communications St. Louis, LLC	Delaware
Concourse Communications UK, Ltd.	England
Concourse Holding Co., LLC.	Delaware
Concourse Telecomunicacoes Brasil Ltda	Brazil
Electronic Media Systems, Inc.	Florida
Endeka Group, Inc.	California
InGate Holding, LLC	Illinois
InGate Technologies, LLC	Delaware
New York Telecom Partners, LLC	Delaware
Opti-Fi Networks, LLC	Delaware
Tego Communications, Inc.	Delaware

## QuickLinks

Exhibit 21.1

<u>List of Subsidiaries as of December 31, 2018</u> (Back To Top)

# **Section 5: EX-23.1 (EX-23.1)**

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Exhibit 23.1

### **Consent of Independent Registered Public Accounting Firm**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-223606, No. 333-216649, No. 333-210108, No. 333-203474, No. 333-195248, No. 333-187471, No. 333-181180, and No. 333-174157) of Boingo Wireless, Inc. of our report dated March 1, 2019 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP Los Angeles, California March 1, 2019

### QuickLinks

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm (Back To Top)

# **Section 6: EX-31.1 (EX-31.1)**

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Exhibit 31.1

#### Certification

#### I, David Hagan, certify that:

- 1. I have reviewed this annual report on Form 10-K of Boingo Wireless, Inc.;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15 (f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2019 /s/ DAVID HAGAN

David Hagan
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

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Exhibit 31.1

Certification (Back To Top)

# **Section 7: EX-31.2 (EX-31.2)**

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Exhibit 31.2

#### Certification

#### I, Peter Hovenier, certify that:

- 1. I have reviewed this annual report on Form 10-K of Boingo Wireless, Inc.;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15 (f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2019

/s/ PETER HOVENIER

Peter Hovenier

Chief Financial Officer (Principal Financial and Accounting Officer)

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Exhibit 31.2

Certification (Back To Top)

# **Section 8: EX-32.1 (EX-32.1)**

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Exhibit 32.1

#### **Certification of Chief Executive Officer**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Boingo Wireless, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Annual Report on Form 10-K of the Company for the period ended December 31, 2018 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2019 /s/ DAVID HAGAN

David Hagan

Chairman of the Board and Chief Executive Officer (Principal Executive
Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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Exhibit 32.1

<u>Certification of Chief Executive Officer</u> (Back To Top)

# **Section 9: EX-32.2 (EX-32.2)**

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Exhibit 32.2

#### **Certification of Chief Financial Officer**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Boingo Wireless, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Annual Report on Form 10-K of the Company for the period ended December 31, 2018 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2019 /s/ PETER HOVENIER

Peter Hovenier
Chief Financial Officer
(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

# QuickLinks

Exhibit 32.2

<u>Certification of Chief Financial Officer</u> (<u>Back To Top</u>)