

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

**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2021

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-36788

**EXELA TECHNOLOGIES, INC.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State of or other Jurisdiction  
Incorporation or Organization)

**2701 E. Grauwylar Rd.**  
**Irving, TX**  
(Address of Principal Executive Offices)

**47-1347291**  
(I.R.S. Employer  
Identification No.)

**75061**  
(Zip Code)

Registrant's Telephone Number, Including Area Code: **(844) 935-2832**

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of Each Exchange On Which Registered
Common Stock, Par Value \$0.0001 per share	XELA	The Nasdaq Stock Market LLC

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

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

The aggregate market value of the Registrant's voting common equity held by non-affiliates of the Registrant, computed by reference to the price at which such voting common equity was last sold as of June 30, 2021, was approximately \$111,882,262 (based on a closing price of \$2.39).

As of March 15, 2022, the Registrant had 380,139,589 shares of common stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

The information required by Part III of this Report, to the extent not set forth herein, is incorporated herein by reference from the registrant's definitive proxy statement relating to the Annual Meeting of Shareholders to be held in 2021, which definitive proxy statement shall be filed with the Securities and Exchange Commission no later than 120 days after the close of the fiscal year ended December 31, 2021.

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements included in this Annual Report on Form 10-K (“Annual Report”) are not historical facts but are forward-looking statements for purposes of the safe harbor provisions under The Private Securities Litigation Reform Act of 1995. Forward-looking statements generally are accompanied by words such as “may”, “should”, “would”, “plan”, “intend”, “anticipate”, “believe”, “estimate”, “predict”, “potential”, “seem”, “seek”, “continue”, “future”, “will”, “expect”, “outlook” or other similar words, phrases or expressions. These forward-looking statements include statements regarding our industry, future events, the estimated or anticipated future results and benefits of the Novitex Business Combination, future opportunities for the combined company, and other statements that are not historical facts. These statements are based on the current expectations of Exela management and are not predictions of actual performance. These statements are subject to a number of risks and uncertainties regarding Exela’s businesses, and actual results may differ materially. The factors that may affect our results include, among others: the impact of political and economic conditions on the demand for our services; the impact of the COVID-19 pandemic; continuing impact from the Appraisal Action, the impact of a data or security breach; the impact of competition or alternatives to our services on our business pricing and other actions by competitors; our ability to address technological development and change in order to keep pace with our industry and the industries of our customers; the impact of terrorism, natural disasters or similar events on our business; the effect of legislative and regulatory actions in the United States and internationally; the impact of operational failure due to the unavailability or failure of third-party services on which we rely; the effect of intellectual property infringement; and other factors discussed in this report under the headings “Risk Factors”, “Legal Proceedings”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and otherwise identified or discussed in this Annual Report. You should consider these factors carefully in evaluating forward-looking statements and are cautioned not to place undue reliance on such statements, which speak only as of the date of this report. It is impossible for us to predict new events or circumstances that may arise in the future or how they may affect us. We undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report. We are not including the information provided on the websites referenced herein as part of, or incorporating such information by reference into, this Annual Report. In addition, forward-looking statements provide Exela’s expectations, plans or forecasts of future events and views as of the date of this report. Exela anticipates that subsequent events and developments will cause Exela’s assessments to change. These forward-looking statements should not be relied upon as representing Exela’s assessments as of any date subsequent to the date of this report.

## DEFINED TERMS

In this Annual Report, we use the terms “Company”, “we”, “us”, or “our” to refer to Exela Technologies, Inc. and its consolidated subsidiaries, and where applicable, our predecessors SourceHOV and Novitex prior to the closing of the Novitex Business Combination. “Following is a glossary of other abbreviations and acronyms that are found in this Annual Report.”

“*Appraisal Action*” means the petition for appraisal pursuant to 8 Del. C. § 262 in the Delaware Court of Chancery, captioned Manichaeon Capital, LLC, et al. v. SourceHOV Holdings, Inc., C.A. No. 2017 0673 JRS.

“*BPA*” means business process automation.

“*BPO*” means business process outsourcing

“*Common Stock*” means the common stock of Exela Technologies, Inc., par value \$0.0001.

“*EIM*” means enterprise information management.

“*ERP*” means enterprise resource planning system.

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

“*Ex-Sigma 2*” means Ex-Sigma 2 LLC, our principal stockholder at the Closing of the Novitex Business Combination.

“*Ex-Sigma*” means Ex-Sigma LLC, the sole equity holder of Ex-Sigma 2.

“GAAP” means generally accepted accounting principles in the United States.

“HGM Group” means, collectively, HandsOn Global Management LLC, HOVS LLC and HandsOn Fund 4 I, LLC and certain of their respective affiliates.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

“IT” mean information technology.

“JOBS Act” means the Jumpstart our Business Startups Act.

“Nasdaq” means The Nasdaq Capital Market.

“Novitex” means Novitex Holdings, Inc., a Delaware corporation.

“Novitex Business Combination” means the transactions contemplated by the Novitex Business Combination Agreement, which closed on July 12, 2017 and resulted in SourceHOV and Novitex becoming our wholly-owned subsidiaries and the financing transactions entered into in connection therewith.

“Novitex Business Combination Agreement” means the Business Combination Agreement, dated February 21, 2017, among the Company, Quinpario Merger Sub I, Inc., Quinpario Merger Sub II, Inc., SourceHOV, Novitex, HOVS LLC, HandsOn Fund 4 I, LLC and Novitex Parent, L.P., as amended.

“PCIDSS” means the Payment Card Industry Data Security Standard.

“Quinpario” means Quinpario Acquisition Corp. 2, a Delaware corporation, the former name of Exela Technologies, Inc.

“SEC” means the United States Securities and Exchange Commission.

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

“SourceHOV” means SourceHOV Holdings, Inc., a Delaware corporation.

“TCJA” means the Tax Cut and Jobs Act.

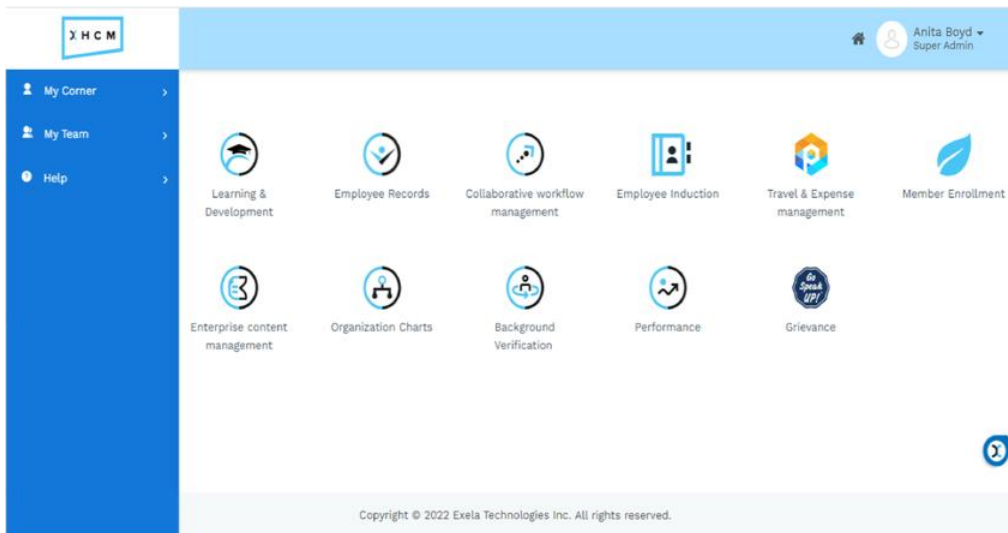
“TPS” means transaction processing solutions.

## PART I

### ITEM 1. BUSINESS

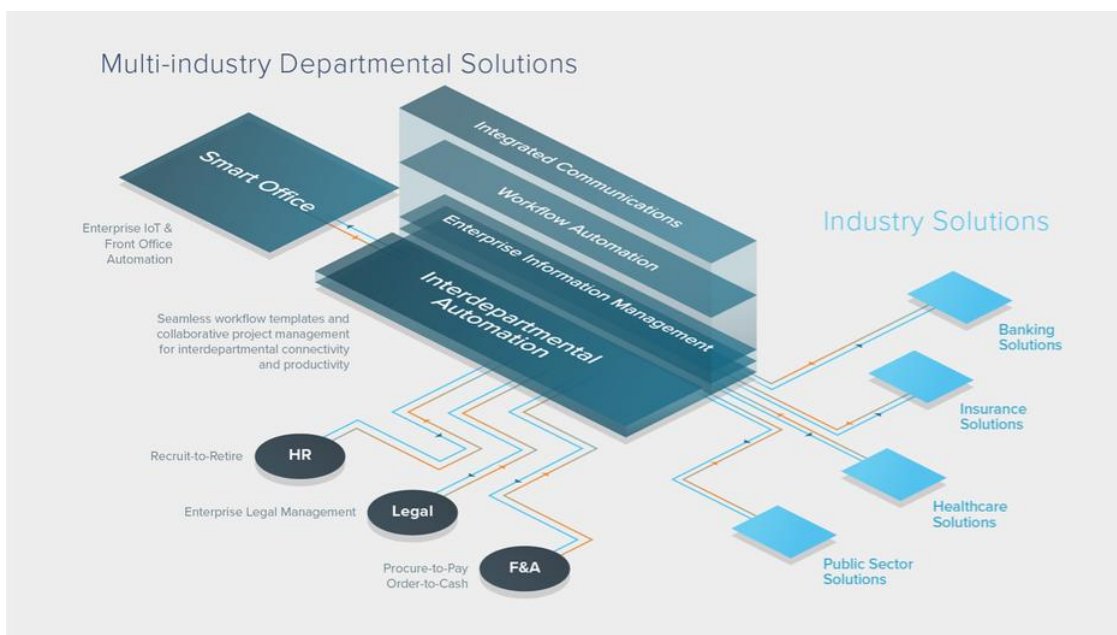
Exela is a business process automation leader, leveraging a global footprint and proprietary technology to streamline complex, disconnected transactions and processes. By connecting data through user friendly software platforms and solutions, we enable our employees and our customers with business process management and help accelerate their digital transformation journey. We have decades of expertise earned from serving many of the world's largest enterprises, including over 60% of the Fortune® 100 and in many mission critical environments across multiple industries, including banking, healthcare, insurance and manufacturing. For the fiscal year ended December 31, 2021, we generated \$1.17 billion of revenue from over 4,000 customers throughout the world.

Our solutions and services touch multiple elements within a customer's organization. We use a global delivery model and primarily host solutions in our data centers, on the cloud or directly from our customers' premises. As of December 31, 2021, approximately half of our 17,000 employees in 23 countries operate remotely, and the remainder operate from our business facilities or are co-located at our customers' facilities. Our solutions are location agnostic, and we believe the combination of our hybrid hosted solutions and global work force in the Americas, EMEA and Asia offers a meaningful differentiation to the industries we serve and services we provide.



*Exela's portals provide on-demand multi-industry and departmental solutions and services alongside industry specific solutions to enable our customers, employees, vendors and Exela to deliver BPM services.*

We will continue to further expand our solutions and services for the industries we serve, with a focus on connecting the front, middle and the back office. We believe this positions us as one of the few companies that can offer solutions and services that span from multi-industry departmental solutions to industry specific solutions.



## Our Solutions and Services

We are a leading, global provider in the Business Process Management (“BPM”) industry. Our digital foundation has been shaped to deliver fully outsourced solutions for current and evolving customer needs. Specifically, our fully operational seven-layer technology stack enables easier integration to build digital bridges over broken processes. We derive all our revenue from BPM, including approximately \$97 million (8.3% of total revenues) in 2021 from the sale of licenses by our digital assets group (“DAG”).

We host our digital foundation across a hybrid environment, both on-premise and/or hosted on the cloud and our customers are able to choose one based on their needs and preferences. Our customers also take advantage of hybrid deployments leveraging either our or their own environment. We sell to our customers recurring licenses and maintenance charges, along with professional service fees for configuration and system integration services. We offer multiple options in relation to licensing. Similar to our BPM model, customers can purchase a license for a number of transactions, however they usually acquire multi-year term licenses with flexible recurring options. As part of our DAG offering, we also offer per user per month subscriptions. We plan for an ever growing portion of our digital foundation to be made available along these pricing and licensing models to our existing and potential customers and to that effect we expanded our plans in late 2020 to include small and medium businesses as well. Our solutions are evolving to contain more self-service features, are easy to deploy, and integrate with existing solutions.

Our BPM solutions have expanded to include a suite of Work from Anywhere (“WFA”) applications to support a remote workforce with enterprise software for connectivity and productivity. Our current BPM solutions including our digital assets are grouped as follows:

- Liquidity Solutions including Procure-to-Pay, Order-to-Cash and Expense Management
- Payment Technologies and Services
- Human Capital Management

- Healthcare Payers and Revenue Cycle Management (RCM)
- WFA solutions
- Information Management and Communications

Our multi-industry and departmental BPM suite of offerings combines platform modules for finance and accounting services, enterprise information management, robotic process automation, digital mailroom, business process management and workflow automation, visualization and analytics, contract management and legal management solutions, and integrated communication services which contribute to revenues across our organization and accounting segments and also complement our core industry solutions for banking, insurance, healthcare and the public sector.

#### ***Finance and Accounting Solutions (F&A)***

Exela offers a suite of finance and accounting (“F&A”) solutions across its network of customers, providing digital roads to connect broken processes of global commerce. By structuring and linking digital data across disparate customer systems, processes and standards, our exchange for bills and payments (“XBP”) enables digital transformation savings and modernization to be rapidly implemented utilizing existing customer infrastructure and in-country settlement processes. As an enabler of digital roads carrying enriched biller, payer and transaction data, we provide process automation and enhanced services addressing the payments lifecycle from procure to pay (“P2P”) to order to cash (“O2C”). We use our own technology and our global operations to deliver these solutions.

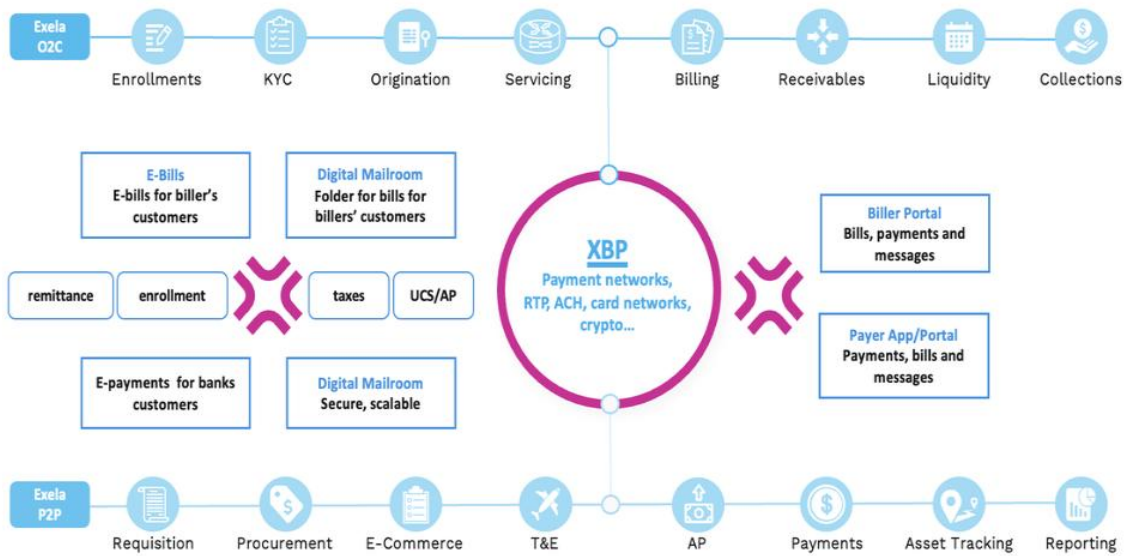
Our XBP solution provides a platform with a secure messaging service, allowing billers, consumers and businesses to communicate and transact utilizing a modern technology stack that can be rapidly connected to any system without a material investment by the prospective customers. Billers are able to send bills to payers, whether businesses or consumers, electronically, offering transparency and simpler reconciliations. Payers are able to receive their bills in one place, with analytics, alerts and several payment options. With XBP making the bill component of P2P and O2C electronic, downstream processes can be integrated with richer and more actionable data, available for adjacent value-added services.

Our O2C solutions enable consolidation of inbound payment channels and data continuity to drive digital adoption and enhance treasury management, including integrated receivables dashboards, multi-channel bill presentment and payment, reconciliation, exception and dispute management, aging analytics, collections management and targeted engagements. The full process includes fulfillment of a customer order, raising an invoice in accordance with customer contracts, accounts receivable management and collections.

Our P2P services can be integrated with our digital mail room technology, which expands our ability to support existing data types and formats. In effect, both digital and analog items can enter this information stream. The process kicks off by opening a requisition, and once approved it moves to procurement to solicit bids from an approved supplier network. We believe that supporting our customers by making available our supplier network can be a key differentiator in enabling a complete P2P solution. Our P2P platform also records receipt of goods and invoices and performs three way matching digitally. Exceptions are processed by our employees, and once approved, we record the purchase in a customer’s ERP system, so it can be paid. We then use our system to generate and deliver a payment file in the format the bank needs so that a payment can be processed. Some of our customers also authorize us to process the payment on their behalf.

Our Record-to-Report (R2R) services include spend analytics and data mining tools for financial planning and analysis to support reporting and audit functions, interchanges and robotics providing automation of ERP entries and regulatory reporting and fixed asset management.

Our mission is to build roads over broken processes, connecting bills, payments and many related processes across many industries by utilizing XBP:



*Plug and play solutions across the Procure-to-Pay (P2P) and Order-to-Cash (O2C) cycle to simplify and personalize user experience, optimize treasury management, and facilitate compliance while reducing administrative cost*

**Enterprise Information Management (EIM)**

Exela’s enterprise information management (“EIM”) solutions ingest and organize large amounts of data across many data types and formats and store the information in cloud enabled proprietary platforms. We also gather transactional data from enterprise systems for similar hosting. The collected, extracted data is used to complete a process, and is then made available to our customers and their end-consumers for an agreed upon period. We derive revenue for such services, hosting and access.

Our EIM systems host billions of often mission critical records for our customers and the total number continues to rise. As an example of a large deployment of our EIM platform, we helped enable online records access to over 63 million end-customers of a group of European savings banks for deposits, statements, and car and personal loans and mortgages. Another example of EIM deployment is in the hosting of images of healthcare records, checks and payroll taxes for many years for retrieval, compliance and internal information purposes.

Our platforms provide a data fabric to simplify integration with customers’ existing EIM systems, and our customers can benefit from being able to conduct federated searches across connected datasets, manage records in accordance with their needs and regulatory requirements, build live customer and employee profiles, and facilitate release of information and routing with control over security and permissions. We also provide business intelligence add-ons, offering summarization of data sets, dashboards and trend monitoring, relationship visualization, macro and micro drill-downs, escalation triggers and notifications.

**Exela Robotic Process Automation**

Exela has been at the forefront of using robotic process automation since 2009. Our deployment model is to use desktop automation first, and if the usage is very high, we usually migrate to server level automation. We have built up a



large library of rules by industry and by customer. While we have been using robotic solutions as part of our internal processes for years, only recently have we made them available to our customers. Our domain experts and analysts can either use an existing bot, modify one or create new ones using our design studio. Our robotic solutions are available as programmable robots with a rules library for a specific industry or feature, or as an enterprise license or on a per user per month basis.

### ***Digital Mailroom Solutions***

Exela is one of the leading global providers of digital mailroom solutions. Our digital mailroom (“DMR”) solutions rely on proprietary technology, use our own or a customer’s facilities and process a significant number of transactions daily. We use proprietary high-speed scanners as well as support most other major scanners. Our end-to-end DMR solution features ingestion from many sources – paper, fax, electronic, emails and other digital data. We also offer recorded voice, image and video ingestion channels. This solution can be complemented with our shipping and receiving services with digital receipt, delivery and routing to our intelligent lockers. Our DMR SMB offering is experiencing rapid adoption, across geographies, and is serving as a catalyst for us to expand the features of DMR and complement it with additional proprietary platforms. One such platform is Exela Remote Notarization, which was launched in late 2021.

We own several classification engines that we deploy for information processing, including unattended digital repositories, for example unattended email boxes to identify content and route it to the appropriate member of an organization. Exela offers DMR for enterprise wide deployment to captive mailrooms of our customers, mailrooms outsourced to both Exela and others, and for business locations where there is no dedicated mail room, such as a front desk. Our customers can see their information across the enterprise from a single platform. Our DMR solutions are available as SaaS, BpaaS or enterprise licenses and we often handle the entire mail operation for a customer.

### ***Business process management and intelligent workflow automation***

Exela has built extensive proprietary workflow automation platforms for business process management across several industries and regions. Our platforms are designed to have intuitive user interfaces with drag & drop configuration enabling analysts a certain amount of customization. Our platforms use our EIM engines by default, are designed to integrate with popular database and enterprise systems and are offered across three user categories:

- **Enterprise class**, hosted on premises. Suitable for 10,000 or more users and 10,000 or more tasks or process automations. Over 10,000 of our employees use this every day to perform mission critical work for our customers in the Americas, EMEA and Asia.
- **Interdepartmental class** workflow automation is ideal to bring structure and collaboration across departments. Over 2,500 of our employees globally use this platform to collaborate with each other and their individual work management. The platform is designed to integrate with other industry leading platforms to create a comprehensive collaborative experience.
- **Case-management** workflow automation platform available as a shrink wrap version for building custom workflows. One can use our library of workflows, customize them or build one from scratch for purposes of case management only. Customers can buy enterprise licenses of this platform, or on a SaaS basis and build their own workflows.

Exela provides visualization and analytics capabilities within its platforms to provide actionable intelligence tied to collaboration and task management. Configurable dashboards enable users to quickly consolidate and organize disparate data sources through intuitive interfaces. Users can also build their own dashboards with dynamic drilldown options and alerts, link data to managers, and launch action items in pursuit of optimization and issue resolution. By providing analytics tied to actionable tasks, we can help drive optimization to enhance profitability and connectivity. For example, users can create visualization of volume trends and set triggers upon statistical thresholds, sending SMS alerts to managers to adjust their downstream capacity planning, if trends are not in line with set thresholds.

While we offer reporting and analytics on the scope of work processed through operations, we also provide our customers the capability to consolidate various data streams into comprehensive dashboards to enhance the business intelligence functions of an organization, including providing real-time visibility to revenue, cost, profitability and cash flow as well as process monitoring, KPI tracking, and actionable alerts.

We believe providing analytics modules complement our services and solutions, creating a superior user experience, and reducing the need for other third-party tools by centralizing business management within Exela's platforms. By enabling users to share dashboards across their organization, we believe additional users will adopt Exela platforms and increase our penetration into the front-end applications across an enterprise.

### ***Enterprise Legal Management***

Exela provides a contract management system to streamline execution, organization, and data management of large volumes of contracts. We utilize natural language processing and machine learning to extract key terms within unstructured formats and complex content, providing variance analysis, summary tables, and automated organization. Users can easily find important data points in contracts, and quickly analyze large volumes of language variations across format types. The extracted data can then be used to connect to existing systems and ERPs and serve as inputs to business operations, such as accounting and billing processes, financial planning and analysis, and regulatory reporting, enabling real-time audit and automated alerts for deviations from contract parameters. By automating key term extraction, our contract management system enables large volumes of contracts to be analyzed quickly and enables processes such as billing or automatic reminders for significant dates. We believe that Exela's ability to cost effectively provide high accuracy transactional operations with automated validations creates a competitive advantage against those relying on manual processes and discrete sampling.

Exela can also provide a digital signature system to streamline collaboration, approvals and execution of contracts. We deploy a secure, hosted environment to request and execute signatures and exchange contracts and documents across individuals or groups. Our platform, Drysign, enables multiple signature execution with routing through approval hierarchies, while providing transparency to the status and tracking of comments and edits. Upon execution, documents are stored electronically for secure archiving and retrieval. As part of our expanded focus on WFA, we launched Drysign to the SMB and individual user market in 2020, initially in Americas, but since then also expanding into the UK, India and Philippines, with further geographic expansions scheduled for 2022. Drysign is offered through a dynamic pricing model, including freemium for low volume users, various SMB plans and also on a per user per month for enterprises. Adoption rate for Drysign since launch reached its highest single quarter growth in Q4, 2021.

Furthermore, Exela offers a suite of enterprise legal management solutions and services that streamline and automate legal department processes to rationalize costs and drive productivity. Solutions and services range from preventative remediation, identifying risks such as overcharges, discrimination, and data breaches and proactively providing restitution, eDiscovery, word processing and contract management using automated summarization and metadata extraction along with cognitive search enabled by natural language processing; and records management.

### ***Integrated Communications***

Exela's comprehensive multi-channel integrated communications solutions help customers communicate with other businesses or customers. This suite of solutions links through many channels, for example, email, print and mail, SMS, web, voice, and chat. Exela solutions and services can also include design and marketing and selection of optimal engagement and least cost routing for mission critical communications for example, bills, statements, enrollments, customer support, targeted marketing, mass notifications, reprographics, and regulatory notices.

We also work with our customers as a digital migration partner to improve user experience while helping to reduce and even eliminate inefficient, wasteful communications. We use proprietary discovery techniques and analytics in addition to service specific technology to propose optimal channel and content. Our employees can also generate personalized messages, customized promotions, incentives, escalations, and resolutions.

### ***Exela Smart Office***

In the second half of 2019, we launched a group of solutions that complement our existing offerings, labeled Exela Smart Office<sup>SM</sup> (“Smart Office”). Smart Office seeks to improve employee and visitor experiences while optimizing facility management efficiency thereby contributing towards corporate sustainability standards. Smart Office is our enterprise IoT, which helps transform the front-office, energy and facilities management, logistics and fulfillment for our customers, and provides on-demand services with connected devices to facilitate green initiatives, reduce waste, and ultimately enhance the employee and visitor experience. For example, our space management software uses sensors to detect facility utilization, which enables optimized space and energy usage and provides mobile workers directions to available work spaces, while our Contactless Entry and Exit (“CEE”) and lobby kiosk can be deployed to regulate facility access and track employee activities with automated time sheets. Our FYI platform connects our customers’ employees with AI assisted digital help desk channels across departments and a federated search forum to quickly explore related topics and discussions. Our Intelligent Lockers are available for visitor day storage of luggage and to provide a secure chain of custody for parcels and mail for employees using our hosted shipping and receiving tools. During 2021, we also launched the table-top high-speed and high-fidelity scanner, the Intelliscan Raptor. The Intelliscan Raptor expands our Intelliscan suite of scanners, most of which cater to enterprise and government agency needs. The Intelliscan Raptor combines the capabilities of those larger scanners but at a much lower cost basis, thereby appealing to both a more price sensitive and space constrained market segment.

### ***Human Capital Management (“HCM”)***

We have onboarded all of our employees to our proprietary human capital management platform, HCM. This platform integrates with our existing offerings and is designed to help an enterprise and its employees manage the data and processes relevant to the entire employment lifecycle from recruitment to retirement. By providing digital management and data tracking for human capital, we enable reduction in administrative overhead and enhanced management of human capital productivity while improving the overall experience. Our human capital management platform is available for sale. HCM has been supplemented by our human resource outsourcing solution, Exela HRS, launched in 2021. Exela HRS includes services such as recruitment, payroll and benefits administration, offered to SMBs and enterprises. Exela’s learning management platform, LYNX, is expected to launch as a SaaS offering in Q2 of 2022.

### ***Industry Specific Services and Solutions***

While the above-described solutions and services can be leveraged across industries, over the years we have also developed services and solutions for specific industries which help our customers around the world better manage their liquidity. The most significant are summarized below.

#### ***Banking and Financial Industry Solutions and Services***

Our banking and financial solutions consist of payment, mortgage, enrollment, lending and loan management, governance and information management solutions and accounted for approximately 27% of 2021 revenue. Exela’s payment operations and treasury management solutions are designed to improve digital engagement and transaction speed and compliance. We also provide mobile and remote deposit technologies to our banking and financial services customers.

We are one of the largest non-bank processors of payments. We handle many payment channels in addition to checks and credit cards including, automated clearing house (ACH), Faster Payments in UK and Ireland, Single European Payment Area (SEPA), Bank Giro in the Nordics and other payment networks. We perform these services on behalf of banks or their customers. We believe the regulatory environment in many geographies is beginning to allow non-bank payment processors to connect to the payment networks directly such that one can verify funds, confirm payee and settlement of payments and are pursuing a PSP license in the European Union to further expand our payment offerings.

We have extensive experience and technology that we have built over decades and that are in use to serve many banks and companies to process the payments related to both business to business (“B2B”) and business to consumer (“B2C”) transactions. We develop, use, and sell proprietary integrated receivables processing technology, providing our customers with a solution that consolidates B2B and B2C transactions across many payment channels into a single platform, connected to our XBP network of global buyers and suppliers. We plan to offer this as a branded or as a private label solution to our banking customers giving them the ability to offer advanced treasury solutions with insights from accounts receivable, customer credit worthiness, payment habits, soft collections and delinquent collections.

We add value by automating manual, repetitive processes to improve speed and provide cost efficiencies within a compliant mortgage and lending completion process. Our proprietary mortgage and loan management solutions enable lenders to originate loans and service them with greater efficiency. Our platforms also enable invoice discounting, factoring, payables financing and leverage automation and integration such that traditional lenders and alternate lenders, including peer to peer lenders can provide liquidity to underserved borrowers.

Our key focus is connecting broken billing and payment processes through XBP using secure messaging and established settlement infrastructure. By providing a digital transformation path without heavy integration requirements, we believe we can rapidly improve user experience, reduce postage, print and mail costs, enable faster decisions, and facilitate optimal allocation of capital and risk management for our customers. By using our solutions and services, we believe our banking and financial services customers can better manage their lending book and at a lower cost of ownership.

Our banking solutions help organizations transform compliance, know your customer, anti-money laundering and confirmation of payee checks into a competitive advantage, including accelerated digital on-boarding, complex process automation, screening and monitoring and predictive analytics. Exela can provide these services as an end-to-end solution or as an augmentation of existing banking processes, as a technology license or through our employees to manage a component or an entire process.

#### ***Healthcare Industry Solutions and Services for Insurance Companies and Healthcare Providers***

Exela’s healthcare industry customers include commercial and government sponsored healthcare plans, hospital networks and university hospital systems and large medical distribution systems and pharmacy networks, and accounted for approximately 23% of total revenues in 2021. We serve our customers using our proprietary technology and for some customers combined with their systems.

We bundle our core solutions and services with a suite of healthcare payer specific services such as end-to-end processing of complex transactions, enrollments and credentialing, claims processing, adjudication and payment operations. We specialize in transactions that require multiple layers of validation, supporting documentation processing, reconciliation, and management of exceptions.

We host a proprietary platform that connects providers and payers for claims submissions, acknowledgements or denials of payments and many other interactions covering the complete lifecycle of a claim, which enables a more satisfactory engagement between payers and providers and contributes to improved access to health care and lower administrative costs. Our payer customers often encourage their contracted providers to adopt our digital platforms for overall reduction of claim processing time and cost. We also provide our healthcare provider customers with many services including computer assisted coding, audit and recovery of underpayments, denial and grievances, release of information, and electronic health records. We plan to offer our mobile and web enrollment solutions, appointment scheduling and locating providers with ratings, also include insurance verification, cost of visit estimates and visit pre-approval. We provide some of these services and features on a stand-alone basis and on a more integrated basis.

#### ***Insurance Industry Solutions and Services***

Exela offers a suite of insurance industry solutions aimed at providing digital engagements and rapid integration of disparate systems and silos. Our insurance industry solutions accounted for approximately 9% of total revenues in 2021. We provide applications and services to facilitate automation and digital transformation for underwriting and

enrollments, premium payments, claims submission, first notification of loss, fraud, waste & abuse monitoring and integrated communications. Our solutions are aimed at improving the customer experience by providing digital pathways and transparency with web portals and integrated communications, while helping to improve quality and risk management.

### **Public Sector**

We provide technology and solutions to public sector customers. Our public sector solutions accounted for approximately 11% of total revenues in 2021. Our mission is to help our public sector customers with their digital journey and meet their objectives of better serving the public. Exela solutions are primarily deployed across pension benefits and administration, tax return processing, payment operations, inter-agency information management and communications with citizens and employees of government institutions.

Our solutions have evolved over time to include digital capabilities and are designed to reduce taxpayer refund waiting time, decrease the potential for tax fraud, and provide reports and data to the relevant stakeholders. Exela also has the infrastructure in place to process payments, perform collection services, handle overflow taxpayer calls, provide e-filing for individual income tax, generate outbound taxpayer notification (traditional and/or electronic notifications), and host other developed solutions.

### **Commercial, Tech, Manufacturing, and Legal Industries Solutions and Services**

For the commercial, technology, manufacturing and legal industries, we primarily provide multi-industry solutions described earlier. For 2021, our commercial industry revenue accounted for approximately 20% of total revenues, our revenues from the technology and manufacturing industry accounted for approximately 6%, while our revenue from the legal industry accounted for approximately 4%.

Historically, the majority of revenue for the above-mentioned industries was generated in the Americas, though we believe there is significant expansion opportunity throughout EMEA and the Asian markets. As we have made investments in our global scale, technology platforms, and business strategy, some of our multi-national customers have expanded our services to other geographies to leverage our international footprint. We believe our value proposition as a single source provider with global platforms and location agnostic operations, positions us as a differentiated partner to our multi-national customers.

With the launch of Smart Office, we have been targeting technology companies in our initial go-to-market approach. We believe technology companies have a heavy focus on employee experience to attract top tier talent, and they often serve as early adopters for new offerings setting trends across other industries, and we believe they will serve as strong references as we expand our Smart Office growth strategy.

### **Overview of Revenues**

Our business consists of three reportable segments:

- **Information and Transaction Processing Solutions ("ITPS").** The ITPS segment is our largest segment, with \$874.1 million of revenues for the fiscal year ended December 31, 2021, representing 74.9% of our revenues. We generate ITPS revenues primarily from a transaction-based pricing model for the various types of volumes processed, licensing and maintenance fees for technology sales, and a mix of fixed management fee and transactional revenue for document logistics and location services.
- **Healthcare Solutions ("HS").** The HS segment generated \$217.8 million of revenues for the fiscal year ended December 31, 2021, representing 18.7% of our revenues. We generate HS revenues primarily from a transaction-based pricing model for the various types of volumes processed for healthcare payers and providers.

- **Legal & Loss Prevention Services ("LLPS").** The LLPS segment generated \$74.6 million of revenues for the fiscal year ended December 31, 2021, representing 6.4% of our revenues. We generate LLPS revenues primarily based on time and materials pricing as well as through transactional services priced on a per item basis.

Additional financial information for our three business segments is included in Note 19 within our consolidated financial statements.

We provide services to our customers on a global basis. In 2021, our revenues by geography were as follows: \$942.0 million in the United States (80.7% of total revenues), \$205.8 million in EMEA (17.6% of total revenues), and \$18.8 million from the rest of the world (1.6% of total revenues). We present additional geographical financial information in Note 19 within our consolidated financial statements.

Our revenues can be affected by various factors such as our customers' demand pattern for our services. These factors have historically resulted in lower revenues in the third quarter and higher revenues in the fourth quarter. Backlog is not a metric that we use to measure our business.

### **History and Development of Our Company**

Exela is a Delaware corporation that was formed through the strategic combination of SourceHOV Holdings, Inc. ("SourceHOV") a leading global transaction processing company, and Novitex Holding, Inc. ("Novitex"), a cloud-based document outsourcing company, pursuant to a business combination agreement dated February 21, 2017. Formerly known as Quinpario Acquisition Corp. 2 ("Quinpario"), Exela was originally formed as a special purpose acquisition company on July 15, 2014 and completed its initial public offering on January 22, 2015. In conjunction with the completion of the Novitex Business Combination in July 2017, Quinpario was renamed "Exela Technologies, Inc." Exela began trading under the ticker "XELA" on the Nasdaq on July 13, 2017.

The Novitex Business Combination was accounted for as a reverse merger for which SourceHOV was determined to be the accounting acquirer. The acquisition of Novitex was accounted for using the acquisition method. As a result, the financial information for 2017 presented in this Annual Report is not pro forma (unless labeled as such); it includes the financial information and activities for SourceHOV for the entire year ending December 31, 2017, but only reflects the financial information and activities of Novitex for the period following the Novitex Business Combination from July 13, 2017 to December 31, 2017.

On April 10, 2018, Exela completed the acquisition of Asterion International Group, a well-established provider of technology driven business process outsourcing, document management and business process automation across Europe. The acquisition was strategic to expanding Exela's European business.

On November 12, 2019 we announced that our Board of Directors had adopted a debt reduction and liquidity improvement initiative ("Initiative"), the main goals of which was to increase the Company's liquidity by \$125 to \$150 million and to reduce debt by \$150 to \$200 million in the subsequent two years. The Initiative was part of the Company's strategic priority to position the Company for long-term success and increased stockholder value. As part of the Initiative, certain subsidiaries of the Company entered into accounts receivable securitization facilities during 2020 and we consummated the sale of our tax benefits consulting group in March 2020 and our physical records storage and logistics business in July, 2020. The Company will continue to pursue the sale of non-core assets that are not central to the Company's long-term strategic vision.

As of December 31, 2021, the Company had largely met the initial goals of the Initiative by:

- Raising \$407 million of gross equity capital in 2021;
- Reducing total long-term debt by \$454 million in 2021;
- Settling the Appraisal Action; and

- Being on-track to exceed the incremental free cash flow improvement of \$50 million per annum in 2022.

The Company remains focused on realizing the strategic priorities of the Initiative.

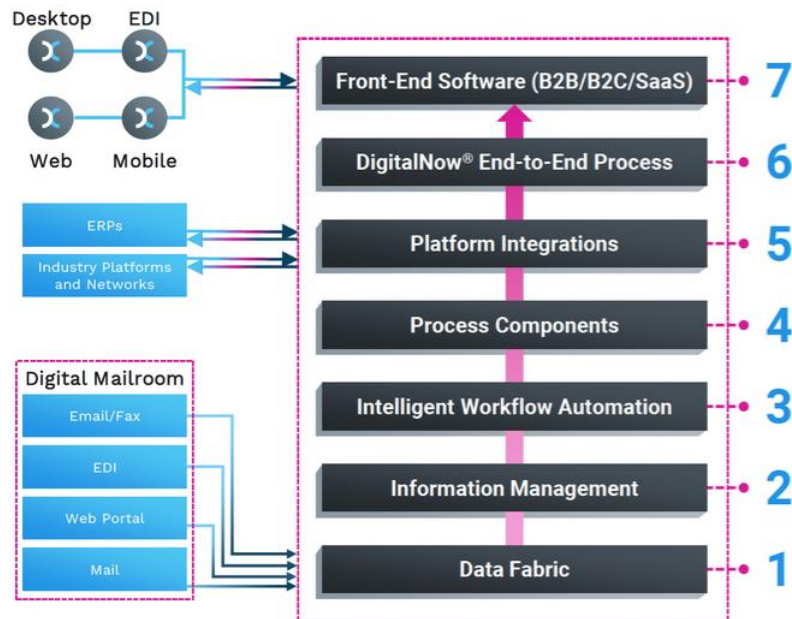
### **Key Business Strategies**

Exela business strategy is to use its Digital Now<sup>SM</sup> model, which aims to accelerate our customers' digital transformation through deployment of our software automation techniques, hosted within a single, cloud hosted platform. Our overarching goal is to provide highest value and lowest cost of ownership. We accomplish this by building scalable systems that are used by our employees to deliver business process automation services globally. The key elements of our growth strategy are described below:

- **Expand Penetration of Solution Stack Across Customer Base.** We seek to move up what we call “the seven layers of technology enabled solutions and services stack,” climbing the value chain from discrete services to end-to-end processes through use of front-end enterprise software. We believe continued deployment of our single sign on portals with on-demand applications will drive expansion of our front-end software (B2B/B2C/SaaS) and integrated offerings.
  - **Layer 1 - Data Fabric** - Host, gather, extract all types of structured and unstructured data, digital and analog
  - **Layer 2 - Information Management** - Digital classifications, data enhancement and normalization driving downstream processes improvement
  - **Layer 3 – Intelligent Workflow Automation** - Digital connectivity and automated decisioning driving productivity and quality
  - **Layer 4 - Process Components** - Operations partner for component(s) of larger process, handing off output file for downstream execution
  - **Layer 5 - Platform Integrations** - Exela platforms directly connected to customers' core systems, accessed through SSO and common interfaces
  - **Layer 6 - Digital Now End-to-End Process** - Full cycle operations and technology for multi-channel process through execution of business outcomes
  - **Layer 7 - Front-End Software (B2B/B2C/SaaS)** - Exela front end applications (branded or private label) directly interfacing with end user experience



See diagram of 7 layers of solutions below:



- **Expand relationships with existing customers.** We intend to continue aggressively pursuing cross-selling and up-selling opportunities within our existing customer base. With an existing base of over 4,000 customers, we believe we have meaningful opportunities to offer a bundled suite of services and be a "one-stop-shop" for our customers' information and transaction processing needs. Our sales force is organized on an industry basis and utilizes solutions and relationships to better serve our customers across all levels of their organizations. As an example, we now offer a full suite of healthcare-focused solutions by bundling enrollments, policy and plan management, claims processing, audit and recovery services, payment solutions, integrated accounts payable and receivable, medical records management, and unified communication services for payers and providers.
- **Expand XBP network of buyers and suppliers.** The hundreds of millions of transactions we process globally present a significant opportunity to seamlessly connect all stakeholders with improved experience, lower cost, and value-added services. We intend to expand the scope and scale of services we offer to our customers by leveraging the integration value our existing network provides as we endeavor to further connect buyers and suppliers to communicate and transact digitally.
- **Leverage BPA suite across on-site services.** Approximately 3,200 of our employees currently work at customers in an on-site capacity. We believe this on-site presence is a competitive differentiator and a valuable asset as we pursue future growth opportunities. We have been deploying our BPA software across these customer locations, and we believe that by offering our customers enhanced productivity and quality through our onsite employees, we will continue to create additional opportunities to expand our footprint and wallet share across their organization. For example, in customers where we provide underwriting support and claims processing, we can enable our onsite employees to accelerate the aggregation and analysis of datasets while also increasing accuracy and automatically flagging deficiencies using our software. By enhancing the productivity and quality of our onsite employees, we believe we will increase the demand from our customers to replicate our processes across their organization, bolstering our cross-sell/up-sell initiatives. By having our BPA suite already approved and deployed within existing onsite engagements, we believe our ability to expand into new lines of business will be streamlined and accelerated.



- **Work-from-Anywhere (WFA) enablement** – We believe the modern workforce will become more globalized, dynamic and distributed, demanding applications that support digital workflows, remote connectivity, productivity optimization and flexible facilities. We plan to continue expanding our WFA suite of enterprise and SMB software such as DMR, Drysign, Exela Remote Notarization and LYNX to meet the evolving needs of our customers and their employees.
- **Pursue new customer opportunities.** We plan to continue to develop new long-term, strategic customer relationships, especially where we have an opportunity to deliver a wide range of our capabilities and can have a meaningful impact on our customers' business outcomes. For example, we plan to dedicate resources within the legal industry in order to pursue opportunities in e-discovery and contract management services.
- **Develop additional process capabilities and industry expertise.** We will focus on developing additional process capabilities and market expertise for our core industries. We will continue to invest in technology and innovation that will accelerate the build-out of our portfolio of next-generation solutions, such as platform-based descriptive and predictive analytics services for processing flows of "Big Data" to help customers gain better insight into their processes and businesses. As an example, on behalf of our customers, we are deploying Big Data automation platforms to analyze individual consumer behavior and interaction patterns to identify opportunities for revenue enhancement and loss prevention, and configure optimal outreach campaigns to drive sales, loyalty, and profitability.
- **Pursue meaningful cost synergy opportunities and accelerate long-term profitability.** Due to similar operating infrastructures between SourceHOV and Novitex, we continue to deliver and believe we have additional opportunities across information technology, operations, facilities, and corporate functions to achieve cost savings executable as we approach three years from the closing of the Novitex Business Combination.
- **Capitalize on our enhanced scale and operating capacity.** We intend to utilize our increased global scale and brand recognition to strengthen our ability to bid on new opportunities. We plan to dedicate more resources to pursue whitespace coverage to expand our range of service offerings and pursue additional cross-selling opportunities. We will also look to use our increased scale and operations expertise to improve utilization of our assets.

## Customers

We serve over 4,000 customers across a variety of industries, including over 60% of the Fortune® 100. Our customers are among the leading companies in their respective industries, and many of them are recurring customers that have maintained long-term relationships with us and our predecessor companies.

We have successfully leveraged our relationships with customers to offer extended value chain services, creating stickier customer relationships and increasing overall margins. Customers are increasingly turning to us due to a demonstrated ability to work on large-scale projects, past performance and record of delivery, and deep domain expertise accumulated from years of experience in key verticals. We believe, our stable base of customers and sticky, long-term relationships lead to predictable revenues.

### Industry Highlights

EIM	Healthcare	Banking	Legal	Commercial	Public Sector
<b>100B</b> Multi-Media Transactions Stored Online	<b>700,000</b> Complex Claims Processed Daily	<b>\$1T+</b> Deposits Processed Annually	<b>\$20B</b> Funds Distributed	<b>\$600B</b> Invoices Processed Annually	<b>\$500M+</b> Electronic Medical Records Processed Annually

We maintain a strong mix of diversified customers with low customer concentration. No customer accounts for more than 10% of 2021 revenue. The diversity of our customer base has contributed to the stability and predictability of our revenue streams and cash flows. We have been able to effectively balance our customer mix and reduce dependency on any single customer or vertical by penetrating a diverse set of end markets.

### Research and Development

Our ability to continue to compete successfully depends heavily upon our ability to ensure a timely flow of competitive products, services and technologies to the marketplace while also leveraging our domain expertise to demonstrate our understanding in implementing solutions across the industries we serve. Through regular and sustained investment, licensing of intellectual property and acquisition of third-party businesses and technology, we continue to develop new knowledge platforms, applications and supporting service bundles that enhance and expand our existing suite of services.

Our seven-layer technology model requires us to continue to harness our capabilities in each layer and the ultimate measure of success will be how many customers are in each layer. We believe that a greater customer concentration in the top layers will reflect the success of our R&D strategy. Additional financial information regarding our R&D expense is included in Note 2 within our consolidated financial statements.

### Intellectual Property

We deploy a combination of internally developed proprietary knowledge platforms, applications and generally available third-party licensed software as part of our scalable and flexible solutions and services. We believe our intellectual property is our competitive strength.

Our platforms aim to enhance information management and workflow processes through automation and process optimization to minimize labor requirements or to improve labor performance. Our decisioning engines have been built with years of deep domain expertise, incorporating hundreds of thousands of customer and industry specific rules which enable efficiency and lowers cost preparation and decisioning of transactions. Our business processes and implementation methodologies are confidential and proprietary and include trade secrets that are important to our business. We own a variety of trademarks and patents, which are registered or pending.

We regularly enter into nondisclosure agreements with customers, business partners, employees, and contractors that require confidential treatment of our information to establish, maintain and enforce our intellectual property rights. Our licensed intellectual properties are generally governed by written agreements of varying durations, including some with fixed terms that are subject to renewal based on mutual agreement. Generally, each agreement may be further extended, and we have historically been able to renew most existing agreements before they expire. We expect these and other similar agreements to be extended so long as it is mutually advantageous to both parties at the time of renewal.

## Competition

We believe that the principal competitive factors in providing our solutions include proprietary platforms, industry specific knowledge, quality, reliability and security of service, and price. We are differentiated competitively given our scale of operations, reputation as a trusted partner with deep domain expertise, innovative solutions, and highly integrated technology platforms that provide customers with end-to-end services addressing many aspects of their mission-critical operational processes. We continue to integrate best practice delivery processes into our service-delivery capabilities to improve its quality and service levels and to increase operational efficiencies. The markets in which we serve are competitive with both large and small businesses, as well as global companies:

- Multi-national companies that provide data aggregation, information management and workflow automation services, such as IBM, EMC, OpenText, Hyland, Iron Mountain, Canon, and Ricoh;
- Consulting, discrete process and platform integration service providers such as Fiserv, Jack Henry, FIS, Black Knight Financial, Optum, Broadridge Financial Solutions, Computershare, Cognizant, and Accenture;
- Platform and front-end software providers, such as Workday, Salesforce, Blackline and Pega;
- Multi-shore BPO companies, such as Genpact, Cognizant, Exl service, Conduent, Wipro, and WNS; and
- Smaller, niche service providers in specific verticals or geographic markets.

## Regulation and Compliance

We handle, directly or indirectly through customer contracts and business associate agreements, a significant amount of information, including personal and health-related information, which results in our being subject to federal, state and local privacy laws, including the Gramm-Leach-Bliley Act, HIPAA and the HITECH Act of 2009. Further, we are subject to the local rules and regulations, including those relating to the handling of information, in the other countries in which we operate. In addition, services in our LLPS segment, though not directly regulated, must be provided in a manner consistent with the relevant legal framework. For example, our bankruptcy claims administration services must be provided in accordance with the requirements and deadlines of the United States Bankruptcy Code and Federal Rules of Civil Procedure. In addition, some of our customers are subject to regulatory oversight, which may result in our being reviewed from time to time by such oversight bodies. Further, as a government contractor, we are subject to associated regulations and requirements.

Changes to existing laws, introduction of new laws, or failure to comply with existing laws that are applicable to us may subject us to, among other things, additional costs or changes to our business practices, liability for monetary damages, fines and/or criminal prosecution, unfavorable publicity, restrictions on our ability to obtain and process information and allegations by our customers and customers that we have not performed our contractual obligations, any of which may have a material adverse effect on profitability and cash flow.

### *Privacy and Information Security Regulations*

Data privacy laws and regulations in the U.S. and foreign countries apply to the access, collection, transfer, use, storage, and destruction of personal information in connection with our services. In the U.S., our financial institution customers are required to comply with privacy regulations imposed under the Gramm-Leach-Bliley Act, in addition to other regulations. As a processor of personal information in our role as a provider of services to financial institutions, we are bound by similar limitations on disclosure of the information received from our customers as apply to the financial institutions themselves. We also perform services for healthcare companies and are, therefore, subject to compliance with laws and regulations regarding healthcare information, including HIPAA in the U.S. We also perform credit-related services and agree to comply with payment card standards, including the PCIDSS. In addition, federal and state privacy

and information security laws, and consumer protection laws, which apply to businesses that collect or process personal information, also apply to our businesses.

Privacy laws and regulations may require notification to affected individuals, federal and state regulators, and consumer reporting agencies in the event of a security breach that results in unauthorized access to, or disclosure of, certain personal information. Privacy laws outside the U.S. may be more restrictive and may require different compliance requirements than U.S. laws and regulations and may impose additional duties on us in the performance of our services.

There has been increased public attention regarding the use of personal information and data transfer, accompanied by legislation and regulations intended to strengthen data protection, information security and consumer and personal privacy. The law in these areas continues to develop and the changing nature of privacy laws in the U.S., the European Union ("E.U") and elsewhere could impact our processing of personal information of our employees and on behalf of our customers. In the E.U. the comprehensive General Data Privacy Regulation (the "GDPR") went into effect in May 2018. The GDPR has introduced significant privacy-related changes for companies operating both in and outside the EU. In the U.S., California has adopted the California Consumer Privacy Act, which went into effect on January 1, 2020, and several states are considering adopting similar laws imposing obligations regarding the handling of personal information. While we believe that we are compliant with our regulatory responsibilities, information security threats continue to evolve resulting in increased risk and exposure. In addition, legislation, regulation, litigation, court rulings, or other events could expose us to increased costs, liability, and possible damage to our reputation.

## Human Capital

The continued success of our business is driven by our people. Our senior leadership team has extensive experience within the larger BPO as well as the BPA industries. As we were formed through a series of acquisitions, we have retained an experienced and cohesive leadership team. The combination of our employees with our technology is the backbone of our ability to provide holistic solutions designed to meet the rapidly evolving needs of our customers.

As of December 31, 2021, we had approximately 17,000 total employees, of which approximately 371 are part-time employees. We have a global workforce with a majority of our employees located in Americas and EMEA, and the remainder located in India, the Philippines and China. Our employee count fluctuates from time to time based upon the timing and duration of our engagements. We consider our employees to be the foundation for our growth and success. As such, our future success as an organization depends in part on our ability to attract, train, retain, and motivate qualified personnel. We are also fully committed to developing and fostering a culture of diversity and inclusion, and understand that our ability to identify and hire talented individuals from all backgrounds and perspectives is key to our continued success.

- **Diversity and inclusion.** We believe that a diverse workforce is critical to our success, and we continue to focus on the hiring, retention, and advancement of women and underrepresented populations. Our recent efforts have been focused in three areas: giving back and supporting the social issues impacting our communities and people, expanding our efforts to recruit and hire world-class diverse talent, and identifying strategic partners to accelerate our inclusion and diversity programs.
- **Compensation and benefits.** We offer a complete set of benefits for our employees, including competitive base salaries and annual cash bonuses, as well as comprehensive health benefits, retirement plans, and a generous time off policy. In addition, we have used targeted equity-based grants with vesting conditions to facilitate retention of personnel, particularly those with critical leadership skills and experience.
- **Health, safety, and wellness.** Health, safety, and wellness. The success of our business is fundamentally connected to the well-being of our people. Accordingly, we are committed to the health, safety and wellness of our employees. We provide our employees and their families with access to a variety of innovative, flexible, and convenient health and wellness programs. These include benefits that provide protection and security so our people can have peace of mind concerning events that may require time away from work or that impact their financial well-being, benefits that support our people's physical and

mental health by providing tools and resources to help them improve or maintain their health status and encourage engagement in healthy behaviors, and benefits that offer choice, where possible, so our people can customize benefits to meet their needs and the needs of their families. In response to the COVID-19 pandemic, we implemented significant changes that we determined were in the best interest of our employees and their families, as well as the communities in which we operate, and which comply with government regulations. This includes having the vast majority of our employees work from home, while implementing additional safety measures for employees continuing critical on-site work.

- **Talent development.** We invest significant resources to develop the talent needed to continue to be a leader in our industry. We deliver numerous training opportunities, provide rotational assignment opportunities, have expanded our focus on continuous learning and development, and implemented industry leading methodologies to manage performance, provide feedback and develop talent. Our talent development programs provide employees with the resources they need to help achieve their career goals, build management skills and lead their organizations. We provide a series of employee workshops around the globe that support professional growth and development. Additionally, our manager and employee forum programs provide an ongoing opportunity for employees to practice and apply learning around conversations aligned with our annual review process. We leverage our proprietary learning management system LYNX to provide employees and leaders with quick access to learning resources that are personalized to the individual's development needs.
- **Building connections - with each other and our communities.** We believe that building connections between our employees, their families, and our communities creates a more meaningful, fulfilling and enjoyable workplace. Our employees are passionate about many causes, so our corporate giving and volunteering programs support and encourage employees by engaging with those causes. We are active and involved members in the communities in which our employees live and work, and we promote a culture of volunteering and giving back. Through our *#ExelaCares* program, in 2021 Exela launched several significant initiatives. We launched *exelashop.com*, an online portal where anyone can purchase eco-friendly and recycled Exela gear. All net proceeds from *exelashop.com* are donated back to the *#ExelaCares* program. In coordination with *exelashop.com*, we also partnered with the Orthopedic Institute for Children (OIC), in alliance with UCLA Health, to help fund diagnosis, treatment, and rehabilitation of kids all over the world with pediatric musculoskeletal conditions who may otherwise not have access to the necessary care. Our Executive Chairman, Par Chadha and his wife, Sharon, donated \$0.1 million and Exela matched for a total of \$0.3 million. All net proceeds from OIC/Exela branded sales go toward helping OIC accomplish its mission.

We locate our operation centers in areas where the value proposition it offers is attractive relative to other local opportunities, resulting in an engaged educated multi-lingual workforce that is able to make a meaningful global contribution from their local marketplace. We offer our employees a focused set of training programs to increase their skills and leadership capabilities with the goal of creating a long-term funnel of talent to support the Company's continued growth. Additionally, our proprietary platforms enable rapid learning and facilitate knowledge transfer among employees, reducing training time.

## Executive Officers

The following table sets forth information concerning our executive officers as of March 16, 2022:

Name	Age	Position
<b>Par Chadha</b>	67	Executive Chairman
<b>Ronald Cogburn</b>	66	Chief Executive Officer
<b>Shrikant Sortur</b>	49	Chief Financial Officer
<b>Suresh Yannamani</b>	56	President
<b>Mark Fairchild</b>	62	President, Exela Smart Office
<b>Srini Murali</b>	49	President, Americas and APAC
<b>Vitalie Robu</b>	50	President, EMEA

**Par Chadha** is our Executive Chairman and is the founder, Chief Executive Officer and Chief Investment Officer of HGM, a family office, formed in 2001. Mr. Chadha brings over 40 years of experience in building businesses in the Americas, Europe and Asia, including execution of mergers and acquisitions, integration of businesses and public offerings. Mr. Chadha served as our Chairman from the Closing of the Business Combination and most recently became Executive Chairman in September 2021. He also served as Chairman of SourceHOV Holdings, Inc. from 2011 to July 2017 when it was acquired by Exela, and was Chairman of Lason Inc. from 2007 to 2011 until its merger with SourceCorp, a predecessor company of SourceHOV. Mr. Chadha is a Director of HOV Services Limited (NSE:HOVS), a company listed on the National Stock exchange of India, since 2005, and served as its Chairman from 2009 to 2011. Mr. Chadha is co-founder of Rule 14, LLC, an artificial intelligence led automation company formed in 2011. During his career, Mr. Chadha has been a cofounder of technology companies in the fields of metro optical networks, systems-on-silicon, and communications. Mr. Chadha previously participated in director and executive roles in portfolio companies of HGM, and currently holds and manages investments in evolving financial technology, health technology and AI industries. Mr. Chadha holds a B.S. degree in Electrical Engineering from the Punjab Engineering College, India.

**Ronald Cogburn** is our Chief Executive Officer and served as Chief Executive Officer of SourceHOV from 2013 until the closing of the Novitex Business Combination. Mr. Cogburn has been part of companies that were predecessors to SourceHOV since 1993, bringing over 30 years of diversified experience in executive management, construction claims consulting, litigation support, program management project management, cost estimating, damages assessment and general building construction. Mr. Cogburn has also been a principal of HGM since 2003. Prior to his role as Chief Executive Officer of SourceHOV, Mr. Cogburn was SourceHOV's President, KPO from March 2011 to July 2013. Prior to this role, Mr. Cogburn was the President of HOV Services, LLC from January 2005 to September 2007, providing executive leadership during the company's growth to its IPO on the India Stock Exchange in September 2006. Mr. Cogburn has a BSCE in Structural Design/Construction Management from Texas A&M University and is a registered Professional Engineer.

**Shrikant Sortur** is our Chief Financial Officer and served as Executive Vice President, Global Finance from the Novitex Business Combination in 2017 until May 15, 2020. Mr. Sortur served as Senior Vice President, Global Finance of SourceHOV from 2016 until the closing of the Novitex Business Combination. He was responsible for SourceHOV's finance and accounting groups and led financial operations, activities, plans and budgets. Mr. Sortur's career spans more than 19 years of varied experience in financial management, accounting, reporting, and lean operations. Mr. Sortur served in other management roles in predecessor companies to SourceHOV from 2002 until the closing of the Novitex Business Combination. Mr. Sortur also acted as Vice President of Finance of SourceHOV from June 2015 to May 2016. Mr. Sortur acted as Director of Financial Planning and Analysis, TPS from January 2014 to June 2015. Prior to this role, Mr. Sortur was the Director of Financial Planning and Analysis, North America Operations from January 2012 to December 2013. Mr. Sortur acted as Controller for HOV Global from January 2009 to December 2011. Mr. Sortur was a Senior Accounting Manager for HOV Services, LLC / Lason, Inc. from May 2004 to December 2008 and worked for the SourceHOV group as a Manager, Finance & Accounts for Lason India Ltd. from December 2002 to May 2014. From March 1999 to December 2002, Mr. Sortur served as General Manager, Finance at SRM Technologies, a business solutions and technology provider specializing in software design and development, systems integration, web services, enterprise mobilization, and embedded solutions development. From June 1997 to February 1999, Mr. Sortur served as

Junior Manager, Finance and Accounting for Steel Authority of India, a large state-owned steel making company based in New Delhi, India. Mr. Sortur graduated from Osmania University with a bachelor's degree in accounting and is a Certified Public Accountant (CPA), Chartered Accountant (CA), and Certified Management Accountant (CMA).

**Suresh Yannamani** is our President and served as President, Americas of SourceHOV from 2011 until the closing of the Novitex Business Combination, and has been a part of companies that were predecessors to SourceHOV from 1997 until the closing of the Novitex Business Combination. Mr. Yannamani oversees the sales and operations and plays a large part in scaling the transaction processing solutions practice and enterprise solution strategy for healthcare, financial services and commercial industries. Mr. Yannamani was also President of HOV Services, LLC from 2007 to 2011, serving customers in the healthcare, financial services, insurance and commercial industries. Mr. Yannamani was the Executive Vice President of BPO services for Lason from 1997 to 2007 prior to its acquisition by HOV Services, LLC. Mr. Yannamani also served in management roles at IBM from 1995 to 1997, managing the design, development, and implementation of financial management information systems for the public sector and worked for Coopers & Lybrand as a consultant in public audits from 1992 to 1994. Mr. Yannamani has a bachelor's degree in Chemistry from the University of London and holds an MBA from Eastern Michigan University.

**Mark D. Fairchild** is our President, Exela SmartOffice and served as President of Exela Enterprise Solutions from the Novitex Business Combination until January 2019 and prior to that served as President, Europe, of SourceHOV from the merger of BancTec and SourceHOV in 2014, having served in management roles at BancTec since 1985. With more than 30 years of executive experience in the financial services industry, Mr. Fairchild specializes in global account management, transaction processing services, software solutions and hardware technology products. In 2005, Mr. Fairchild was appointed Chief Technology Officer of BancTec and was responsible for the company's software and hardware products, manufacturing and internal IT services until 2014. Prior to this role, Mr. Fairchild acted as Vice President for International Operations of BancTec from 2001 to 2005 and VP of European Operations from 1998 to 2001. In his role as International Systems Director from 1991 to 1998, Mr. Fairchild led the European software teams, implementing payment platforms throughout the region. As Director of Engineering of BancTec from 1989 to 1991, Mr. Fairchild led the research and development team that introduced a new high-speed digital image processing system that formed the base of BancTec's ImageFIRST product portfolio. Mr. Fairchild joined BancTec as a Project Manager, a position he held from 1985 to 1986. He began his career as a software developer at British Aerospace, where he worked from 1981 to 1985. Mr. Fairchild graduated with honors from Manchester University with a bachelor's degree in aeronautical engineering and holds an MBA from London Business School.

**Srini Murali** is our President, Americas and APAC and served as Chief Operating Officer Americas and APAC from the Novitex Business Combination until January 2019. He is responsible for all sales, operations and business strategy functions across the Americas and Asia Pacific. Prior to the Novitex Business Combination, Mr. Murali served as Senior Vice President, Operations for the Americas and APAC regions for SourceHOV, creating global operating strategies, developing client relationships, and overseeing compliance. Mr. Murali has been a part of predecessor companies to SourceHOV since 1993. During his tenure, Mr. Murali has held analysis, product development, IT, and operational roles. In 2010, Mr. Murali took on a broader scope of responsibility as SourceHOV's Senior Vice President of Global Operations and IT. Mr. Murali has served in executive-level leadership roles at companies that preceded SourceHOV since 2007, when he was appointed Vice President of IT and Technology. Prior to these management roles, Mr. Murali served as Director of Information Technology for Lason from 2002 to 2007, and as an Application Development Manager for Lason from 1998 to 2002. Before joining Lason, Mr. Murali worked as a Systems Engineer for Vetri Systems from 1996 to 1998. Mr. Murali graduated with a bachelor's degree in mathematics and statistics from Loyola College, Chennai, and earned an MBA from Davenport University, Michigan.

**Vitalie Robu** is our President, EMEA and served as Chief Operating Officer, EMEA from the Novitex Business Combination until January 2019. Mr. Robu is responsible for all sales, operations and business strategy functions across Europe, the Middle East and Africa. Mr. Robu specializes in transaction processing services, technology products, and software solutions, and has over 20 years of international management experience in the private and public sectors. Prior to the Novitex Business Combination, he served as Senior Vice President, Operations for the European region of SourceHOV from 2014. From 2010 to 2014, Mr. Robu held the position of President and Executive Director of



DataForce UK, a business process outsourcing and software provider that was part of SourceHOV. Prior to joining the SourceHOV group, Mr. Robu served as Manager of Investment and Insurance Products for Citibank EMEA in London from 2007 to 2010. Mr. Robu has degrees in International Relations from the National School for Political Studies, Bucharest and Physics from the State University of Moloves, and earned an MBA from IMD — International Institute for Management Development, Lausanne.

### **Reverse Stock Split**

At the 2020 Annual Meeting, our stockholders authorized our Board of Directors, in its discretion, to amend our Second Amended and Restated Certificate of Incorporation (the "COI") to effect a reverse split of our outstanding Common Stock at a ratio between one-for-three and one-for-ten, with such final ratio to be determined by the Board of Directors following the special meeting (the "Reverse Stock Split"). On January 22, 2021, the Board of Directors determined to set the Reverse Stock Split ratio at one-for-three and approved the final form of the certificate of amendment to our COI to effectuate the Reverse Stock Split, which was filed with the Secretary of State of the State of Delaware on January 25, 2021. The Reverse Stock Split became effective in accordance with the terms of the certificate of amendment at 5:00 p.m. Eastern Time on that date, at which time every three (3) shares of Common Stock issued and outstanding automatically combined into one (1) share of issued and outstanding Common Stock, without any change in the par value per share. Fractional shares were not issued as a result of the Reverse Stock Split. Stockholders who would otherwise have been entitled to a fractional share of Common Stock instead received cash in lieu of fractional shares based on the closing sale price of the Company's Common Stock as quoted on the Nasdaq on January 25, 2021.

The Reverse Stock Split resulted in a proportionate adjustment to the per share exercise price and the number of shares of Common Stock issuable upon the exercise of our outstanding stock options and warrants, as well as the number of shares of Common Stock eligible for issuance under the Company's 2018 Stock Incentive Plan. In addition, the conversion rate of our preferred stock was equitably adjusted following the Reverse Stock Split, such that the conversion rate is now 0.3030 (previously 0.9090) and the Conversion Price is \$26.40 (previously \$8.80), with the effect that immediately following the Reverse Stock Split, each share of Preferred Stock converts into 1/3rd of the number of shares of Common Stock into which it was convertible immediately prior to Reverse Stock Split. Similarly, as a result of the Reverse Stock Split, the number of shares of Common Stock issuable on exercise of each of our warrants has been decreased in proportion to such decrease in outstanding shares of Common Stock. As a result, each warrant previously exercisable for one-half a share at \$5.75 per half share (\$11.50 per share), is now exercisable for one-sixth of a share at \$5.75 per one-sixth of a share (\$34.50 per share).

Except as otherwise indicated, all share and per share information herein gives pro forma effect to the Reverse Stock Split.

### **Available Information**

Our website address is [www.exelatech.com](http://www.exelatech.com). We are not including the information provided on our website as a part of, or incorporating it by reference into, this Annual Report. We make available free of charge (other than an investor's own internet access charges) through our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to these reports, as soon as reasonably practicable after we electronically file such material with, or furnish such material to, the Securities and Exchange Commission (the "SEC"). In addition, we make available our code of ethics entitled "Global Code of Ethics and Business Conduct" free of charge through our website. We intend to post on our website all disclosures that are required by law or Nasdaq listing standards concerning any amendments to, or waivers from, any provision of our code of ethics.

The SEC maintains an internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov). The information contained on the websites referenced in this Annual Report is not incorporated by reference into this filing.



## ITEM 1A. RISK FACTORS

*In addition to the other information contained in this Annual Report, the following risks impact our business and operations. These risk factors are not exhaustive and all investors are encouraged to perform their own investigation with respect to our business, financial condition and prospects.*

### **Risks Related to our Business**

***We have substantial indebtedness and other obligations and any failure to meet our debt service obligations or restrictive covenants would have a material adverse effect on our business, financial condition, cash flows and results of operation and could cause the market value of our Common Stock to decline.***

As of December 31, 2021, we had approximately \$1.1 billion of long-term debt, excluding current maturities. While the Company seeks to repay and/or refinance a material portion of its indebtedness, there can be no assurance that such plan will be successful in whole or in part and, even if the plan is successful, we will still have a substantial amount of indebtedness outstanding.

Our indebtedness and other obligations could: require a substantial portion of cash flow from operations to be dedicated to servicing our indebtedness, thereby reducing our ability to use cash flow from operations to fund operations, capital expenditures, and future business opportunities; increase the risks of adverse consequences resulting from a breach of any indebtedness agreement, including, for example, a failure to make required payments of principal or interest due to failure of our business to perform as expected; decrease our ability to obtain additional financing for working capital, capital expenditures, general corporate or other purposes; limit our flexibility to make acquisitions; require non-strategic divestitures; increase our cash requirements to support the payment of interest; limit our flexibility in planning for, or reacting to, changes in our business and our industry; and increase our vulnerability to adverse changes in general economic and industry conditions.

Our ability to make payments of principal and interest on our indebtedness and our ability to comply with financial covenants in our various debt agreements depends upon our future performance, which will be subject to general economic conditions and financial, business and other factors affecting our consolidated operations, many of which are beyond our control. If we are unable to generate sufficient cash flow from operations in the future to service our debt and meet our other cash requirements, we may be required, among other things: to seek additional financing in the debt or equity markets; to refinance or restructure all or a portion of our indebtedness; to sell certain of our assets, to the extent permitted under our indebtedness agreements; or to reduce or delay planned capital or operating expenditures. Our ability to restructure or refinance our debt will depend on the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. In addition, any such financing, refinancing or sale of assets might not be available at all or on economically favorable terms. Our inability to generate sufficient cash flow to satisfy our debt service obligations or to refinance our obligations on commercially reasonable terms could have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our Common Stock to decline.

***Our future profitability and ability to sustain positive cash flow is uncertain.***

Our future profitability depends on, among other things, our ability to generate revenue in excess of our expenses. However, we have significant and continuing fixed costs relating to the maintenance of our assets and business, including debt service requirements, which we may not be able to reduce adequately to sustain such profitability if our revenue decreases. Our future profitability also may be impacted by non-cash charges such as stock-based compensation charges and potential impairment of goodwill, which will negatively affect our reported financial results. Even if we achieve profitability on an annual basis, we may not be able to achieve profitability on a quarterly basis. You should not consider prior revenue growth as indicative of our future performance. In fact, in future quarters, we may not have any revenue growth or our revenue could decline. We may incur significant losses in the future for a number of reasons and risks described elsewhere herein and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown events.

Our ability to generate positive cash flow depends on our ability to generate collections from sales in excess of our cash expenditures. Our ability to generate and collect on sales can be negatively affected by many factors, including but not limited to our inability to convince new customers to use our services or existing customers to renew their contracts or use additional services; the lengthening of our sales cycles and implementation periods; changes in our customer mix; a decision by any of our existing customers to cease or reduce using our services; failure of customers to pay our invoices on a timely basis or at all; a failure in the performance of our solutions or internal controls that adversely affects our reputation or results in loss of business; the loss of market share to existing or new competitors; the failure to enter or succeed in new markets; regional or global economic conditions or regulations affecting perceived need for or value of our services; or our inability to develop new offerings, expand our offerings or drive adoption of our new offerings on a timely basis and thus potentially not meeting evolving market needs.

We anticipate that we will incur increased sales and marketing and general and administrative expenses as we continue to diversify our business into new industries and geographic markets. Our business will also require significant amounts of working capital to support our growth. We may not achieve collections from sales to offset these anticipated expenditures sufficient to maintain positive future cash flow. In addition, we may encounter unforeseen expenses, difficulties, complications, delays and other unknown events that cause our costs to exceed our expectations. An inability to generate positive cash flow may decrease our long-term viability.

***In 2020, we restated certain of our previously issued consolidated financial statements, which resulted in unanticipated costs and may affect investor and customer confidence and raise reputational issues.***

In 2020, we restated our consolidated financial statements and related disclosures for the years ended December 31, 2018 and December 31, 2017 and restated each of the quarterly periods for the nine months ended September 30, 2019 and for the year ended December 31, 2018. As a result, we incurred unanticipated costs for accounting and legal fees in connection with or related to the restatement, and have become subject to a number of additional risks, costs and uncertainties, including the risk of related litigation. On March 23, 2020, a class action litigation relating to, among other things, the restatement was filed, and on January 21, 2022, our motion to dismiss the litigation was denied. The restatement also increased the risk of adverse actions by governmental agencies and regulatory bodies. We could face monetary judgments, penalties or other sanctions. If any such actions occur, they may, regardless of the outcome, consume a significant amount of management's time and attention and may result in additional legal, accounting, insurance and other costs. If we do not prevail in any such proceedings, we could be required to pay damages or settlement costs. Each of these occurrences may affect investor and customer confidence in the accuracy of our financial disclosures and raise reputational issues for our business, and could have a material adverse effect on our business, results of operations, financial condition and stock price.

***We have recorded significant goodwill impairment charges and may be required to record additional charges to future earnings if our goodwill or intangible assets become impaired.***

As of December 31, 2021, our goodwill balance was \$358.3 million which represented 34.6% of total consolidated assets. We are required under GAAP to review our intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment at least annually. Factors that may be considered a change in circumstances indicating that the carrying value of our intangible assets and/or goodwill may not be recoverable include a decline in stock price and market capitalization, slower growth rates in our industry or our own operations, and/or other materially adverse events that have implications on the profitability of our business or business segments. We may be required to record additional charges to earnings during the period in which any impairment of our goodwill or other intangible assets is determined which could have a material adverse impact on our results of operations. Even though these charges may be non-cash items and may not have an immediate impact on our liquidity, the fact that we report charges of this nature could contribute to negative market perceptions about us or our securities, including our Common Stock.

***The HGM Group has significant influence over us and our corporate governance.***

Our Executive Chairman, Par Chadha, our director, Ms. Sharon Chadha, and several of our other executives have affiliations with the HGM Group, which may be deemed to be the largest beneficial owner of our Common Stock.

So long as the HGM Group owns or controls a significant percentage of outstanding voting power, it will have the ability to strongly influence all corporate actions requiring stockholder approval, including the election and removal of directors and the size of our board of directors, any amendment of our certificate of incorporation or bylaws, or the approval of any merger or other significant corporate transaction, including a sale of substantially all of our assets. In addition, pursuant to the terms of the Director Nomination Agreement, the HGM Group has certain nomination rights with respect to our board of directors and consent rights over certain of our corporate actions.

Additionally, the HGM Group's interests may not align with the interests of our other stakeholders. The HGM Group is in the business of making investments in companies and may acquire and hold interests in businesses that compete directly or indirectly with us. The HGM Group may also pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. In addition, our certificate of incorporation provides that we renounce any interest or expectancy in the business opportunities of the HGM Group and that it shall not have any obligation to offer to us those opportunities unless presented to one of our directors or officers in his or her capacity as a director or officer of Exela.

***Certain of our contracts are subject to termination rights, audits and/or investigations, which, if exercised, could negatively impact our reputation and reduce our ability to compete for new contracts and have an adverse effect on our business, results of operations and financial condition.***

Many of our customer contracts may be terminated by our customers without cause and without any fee or penalty, with only limited notice. Any failure to meet a customer's expectations, as well as factors beyond our control, including a customer's financial condition, strategic priorities, or mergers and acquisitions, could result in a cancellation or non-renewal of such a contract or a decrease in business provided to us and cause our actual results to differ from our forecasts. We may not be able to replace a customer that elects to terminate or not renew its contract with us, which would reduce our revenues.

In addition, a portion of our revenues is derived from contracts with the U.S. federal and state governments and their agencies and from contracts with foreign governments and their agencies. Government entities typically finance projects through appropriated funds. While these projects are often planned and executed as multi-year projects, government entities usually reserve the right to change the scope of, or terminate, these projects for lack of approved funding and/or at their convenience. Changes in government or political developments, including budget deficits, shortfalls or uncertainties, government spending reductions (e.g., during a government shutdown) or other debt or funding constraints could result in lower governmental sales and in our projects being reduced in price or scope or terminated altogether, which also could limit our recovery of incurred costs, reimbursable expenses and profits on work completed prior to the termination. The public procurement environment is unpredictable and this could adversely affect our ability to perform work under new and existing contracts. Also, our government business is subject to the risk that one or more of our potential contracts or contract extensions may be diverted by the contracting agency to a small or disadvantaged or minority-owned business pursuant to set-aside programs may be bundled into large multiple award contracts for very large businesses. These risks can potentially have an adverse effect on our revenue growth and profit margins.

Moreover, government contracts are generally subject to audits and investigations by government agencies. If the government finds that it was inappropriately charged any costs to a contract, the costs are not reimbursable or, if already reimbursed, the cost must be refunded to the government. Additionally, if the government discovers improper or illegal activities or contractual non-compliance (including improper billing), we may be subject to various civil and criminal penalties and administrative sanctions, which may include termination of contracts, forfeiture of profits, suspension of payments, fines and suspensions or debarment from doing business with the government. Any resulting penalties or sanctions could be substantial. Further, the negative publicity that could arise from any such penalties, sanctions or findings in such audits or investigations could have an adverse effect on our reputation in the industry and reduce our ability to compete for new contracts and could materially adversely affect our results of operations and financial condition.

***Our Common Stock may be delisted from Nasdaq.***

Our Common Stock is currently listed for trading on the Nasdaq, and the continued listing of our Common Stock on the Nasdaq is subject to our compliance with a number of listing standards, including the \$1.00 minimum bid price requirement for continued listing on the Nasdaq under Rule 5550(a)(2) of the Nasdaq Listing Rules and Nasdaq Listing Rule 5250(c)(1), which requires timely filing of periodic reports with the SEC. During 2022, we failed to meet the requirement that our minimum bid price exceed \$1.00 for at least 30 consecutive business days and received a letter from Nasdaq regarding the infraction. There can be no assurance that we will remedy and continue to satisfy this and other continuing listing requirements and remain listed on the Nasdaq, and in order to do so we may have to effect one or more additional reverse stock splits. If our Common Stock were no longer listed on the Nasdaq, investors might only be able to trade on one of the over-the-counter markets. This would impair the liquidity of our Common Stock not only in the number of shares that could be bought and sold at a given price, which might be depressed by the relative illiquidity, but also through delays in the timing of transactions and reduction in media coverage. In addition, we could face significant material adverse consequences, including: a limited availability of market quotations for our securities; a limited amount of news and analyst coverage for us; and a decreased ability to issue additional securities or obtain additional financing.

***Downgrades in our credit ratings could impact our ability to access capital and materially adversely affect our business, financial condition and results of operations.***

Credit rating agencies continually review their ratings for the companies that they follow, including us. Credit rating agencies also evaluate the industries in which we and our affiliates operate as a whole and may change their credit rating for us based on their overall view of such industries. There can be no assurance that any rating assigned to our currently outstanding public debt securities will remain in effect for any given period of time or that any such ratings will not be further lowered, suspended or withdrawn entirely by a rating agency if, in that rating agency's judgment, circumstances so warrant.

A further downgrade of our credit ratings could, among other things:

- limit our ability to access capital or otherwise adversely affect the availability of other new financing on favorable terms, if at all;
- result in more restrictive covenants governing the terms of any future indebtedness that we may incur;
- cause us to refinance indebtedness with less favorable terms and conditions, which debt may require collateral and restrict, among other things, our ability to pay distributions or repurchase shares;
- increase our cost of borrowing;
- adversely affect the market price of our outstanding debt securities; and
- impair our business, financial condition and results of operation.

***We may not always offset increased costs with increased fees under long-term contracts.***

The pricing and other terms of our customer contracts, particularly our long-term contact center agreements, are based on estimates and assumptions we make at the time we enter into these contracts. These estimates reflect our best judgments regarding the nature of the engagement and our expected costs to provide the contracted services and could differ from actual results. Not all our larger long-term contracts allow for escalation of fees as our cost of operations increase and those that allow for such escalations do not always allow increases at rates comparable to increases that we experience. If and where we cannot negotiate long-term contract terms that provide for fee adjustments to reflect increases in our cost of service delivery, our business, financial conditions, and results of operation would be materially impacted.

***Our business process automation solutions often require long selling cycles and long implementation periods that may result in significant upfront expenses that may not be recovered.***

We often face long selling cycles to secure new contracts for our business process automation solutions. If we are successful in obtaining an engagement, the selling cycle can be followed by a long implementation period during which we plan our services in detail and demonstrate to the customer our ability to successfully integrate our solutions

with the customer's internal operations. Our customers may experience delays in obtaining internal approvals or delays associated with technology or system implementations which can further lengthen the selling cycle or implementation period, and certain engagements may also require a ramping up period after implementation before we can commence providing our services. Even if we succeed in developing a relationship with a potential customer and begin to discuss the services in detail, the potential customer may choose a competitor or decide to retain the work in-house prior to the time a contract is signed. In addition, once a contract is signed, we sometimes do not begin to receive revenue until completion of the implementation period and our solution is fully operational. The extended lengths of our selling cycles and implementation periods can result in the incurrence of significant upfront expenses that may never result in profits or may result in profits only after a significant period of time has elapsed, which may negatively impact our financial performance. For example, we generally hire new employees to provide services in connection with certain large engagements once a new contract is signed. Accordingly, we may incur significant costs associated with these hires before we collect corresponding revenues. Our inability to obtain contractual commitments after a selling cycle, maintain contractual commitments after the implementation period or limit expenses prior to the receipt of corresponding revenue may have a material adverse effect on our business, results of operations and financial condition.

***We face significant competition from U.S.-based and non-U.S.-based companies and from our customers who may elect to perform their business processes in-house.***

Our industry is highly competitive, fragmented and subject to rapid change. We compete primarily against large multi-national information technology companies, focused BPO companies based in offshore locations, BPO divisions of information technology companies located in India, other BPO and BPA and consulting providers that focus on the legal sector and the in-house capabilities of our customers and potential customers. These competitors may include entrants from adjacent industries or entrants in geographic locations with lower costs than those in which we operate.

Some of our competitors have greater financial, marketing, technological or other resources, larger customer bases and more established reputations or brand awareness than we do. In addition, some of our competitors who do not have, or have limited, global delivery capabilities may expand their delivery centers to the countries in which we operate or increase their capacity in lower cost geographies, which could result in increased competition. Some of our competitors may also enter into strategic or commercial relationships among themselves or with larger, more established companies in order to benefit from increased scale and enhanced scope capabilities or enter into similar arrangements with potential customers. Further, we expect competition to intensify in the future as more companies enter our markets and customers consolidate the services they require among fewer vendors. Increased competition, our inability to compete successfully against competitors, pricing pressures or loss of market share could result in reduced operating margins, which could adversely affect our business, results of operations and financial condition.

***Our industry is characterized by rapid technological change and failure to compete successfully within the industry and address rapid technological change could adversely affect our results of operations and financial condition.***

The process of developing new services and solutions is inherently complex and uncertain. It requires accurate anticipation of customers' changing needs and emerging technological trends. We must make long-term investments and commit significant resources before knowing whether these investments will eventually result in services that achieve customer acceptance and generate the revenues required to provide desired returns. If we fail to accurately anticipate and meet our customers' needs through the development of new technologies and service offerings or if our new services are not widely accepted, we could lose market share and customers to our competitors and that could materially adversely affect our results of operations and financial condition.

More specifically, the business process solutions industry is characterized by rapid technological change, evolving industry standards and changing customer preferences. The success of our business depends, in part, upon our ability to develop technology and solutions that keep pace with changes in our industry and the industries of our customers. Although we have made, and will continue to make, significant investments in the research, design and development of new technology and platforms-driven solutions, we may not be successful in addressing these changes on a timely basis or in marketing the changes we implement. In addition, products or technologies developed by others may render our services uncompetitive or obsolete. Failure to address these developments could have a material adverse effect on our business, results of operations and financial condition.

In addition, existing and potential customers are actively shifting their businesses away from paper-based environments to electronic environments with reduced needs for physical document management and processing. This shift may result in decreased demand for the physical document management services we provide such that our business and revenues may become more reliant on technology-based services in electronic environments, which are typically provided at lower prices compared to physical document management services. Though we have solutions for customers seeking to make these types of transitions, a significant shift by our customers away from physical documents to non-paper based technologies, whether now existing or developed in the future, could adversely affect our business, results of operation and financial condition.

Also, some of the large international companies in the industry have significant financial resources and compete with us to provide document processing services and/or business process services. We compete primarily on the basis of technology, performance, price, quality, reliability, brand, distribution and customer service and support. Our success in future performance is largely dependent upon our ability to compete successfully, to promptly and effectively react to changing technologies and customer expectations and to expand into additional market segments. To remain competitive, we must develop services and applications; periodically enhance our existing offerings; remain cost efficient; and attract and retain key personnel and management. If we are unable to compete successfully, we could lose market share and important customers to our competitors and that could materially adversely affect our results of operations and financial condition.

***We rely, in some cases, on third-party hardware and software, which could cause errors or failures of our services and could also result in adverse effects for our business and reputation if these third-party services fail to perform properly or are no longer available.***

Although we developed our platform-driven solutions internally, we rely, in some cases, on third-party hardware and software in connection with our service offerings which we either purchase or lease from third-party vendors. We are generally able to select from a number of competing hardware and software applications, but the complexity and unique specifications of the hardware or software makes design defects and software errors difficult to detect. Any errors or defects in third-party hardware or software incorporated into our service offerings, may result in a delay or loss of revenue, diversion of resources, damage to our reputation, the loss of the affected customer, loss of future business, increased service costs or potential litigation claims against us.

Further, this hardware and software may not continue to be available on commercially reasonable terms or at all. Any loss of the right to use any of this hardware or software could result in delays in the provisioning of our services, which could negatively affect our business until equivalent technology is either developed by us or, if available, is identified, obtained and integrated. In addition, it is possible that our hardware vendors or the licensors of third-party software could increase the prices they charge, which could have a material adverse impact on our results of operations. Further, changing hardware vendors or software licensors could detract from management's ability to focus on the ongoing operations of our business or could cause delays in the operations of our business.

***Some of the work we do involves greater risks than other types of claims processing or document management engagements.***

We provide certain business process solutions for customers that, for financial, legal or other reasons, may present higher risks compared to other types of claims processing or document management engagements. Examples of higher risk engagements include, but are not limited to:

- class action and other legal distributions involving significant sums of money;
- economic analysis and expert testimony in high stakes legal matters; and
- engagements where we receive or process sensitive data, including personal consumer or private health information.

While we attempt to identify higher risk engagements and customers and mitigate our exposure by taking certain preventive measures and, where necessary, turning down certain engagements, these efforts may be ineffective and an actual or alleged error or omission on our part, the part of our customer or other third parties or possible fraudulent activity in one or more of these higher-risk engagements could result in the diversion of management



resources, damage to our reputation, increased service costs or impaired market acceptance of our services, any of which could negatively impact our business and our financial condition.

***Our business could be materially and adversely affected if we do not protect our intellectual property or if our services are found to infringe on the intellectual property of others.***

Our success depends in part on certain methodologies and practices we utilize in developing and implementing applications and other proprietary intellectual property rights. In order to protect such rights, we rely upon a combination of nondisclosure and other contractual arrangements, as well as trade secret, copyright, trademark and patent laws. We also generally enter into confidentiality agreements with our employees, customers and potential customers and limit access to and distribution of our proprietary information. There can be no assurance that the laws, rules, regulations and treaties in effect in the U.S., India and the other jurisdictions in which we operate and the contractual and other protective measures we take are adequate to protect us from misappropriation or unauthorized use of our intellectual property, or that such laws will not change. There can be no assurance that the resources invested by us to protect our intellectual property will be sufficient or that our intellectual property portfolio will adequately deter misappropriation or improper use of our technology, and our intellectual property rights may not prevent competitors from independently developing or selling products and services similar to or duplicative of ours. We may not be able to detect unauthorized use and take appropriate steps to enforce our rights, and any such steps may be costly and unsuccessful. Infringement by others of our intellectual property, including the costs of enforcing our intellectual property rights, may have a material adverse effect on our business, results of operations and financial condition. We could also face competition in some countries where we have not invested in an intellectual property portfolio. If we are not able to protect our intellectual property, the value of our brand and other intangible assets may be diminished, and our business may be adversely affected. Further, although we believe that we are not infringing on the intellectual property rights of others, claims may nonetheless be successfully asserted against us in the future, and we may be the target of enforcement of patents or other intellectual property by third parties, including aggressive and opportunistic enforcement claims by non-practicing entities. Regardless of the merit of such claims, responding to infringement claims can be expensive and time-consuming. If we are found to infringe any third-party rights, we could be required to pay substantial damages or we could be enjoined from offering some of our products and services. The costs of defending any such claims could be significant, and any successful claim may require us to modify our services. The value of, or our ability to use, our intellectual property may also be negatively impacted by dependencies on third parties, such as our ability to obtain or renew on reasonable terms licenses that we need in the future, or our ability to secure or retain ownership or rights to use data in certain software analytics or services offerings. Any such circumstances may have a material adverse effect on our business, results of operations and financial condition.

***We generate a significant portion of our revenues from a small number of customers, and any loss of business from these customers could materially reduce our revenues.***

We have derived, and believe that in the foreseeable future we will continue to derive, a significant portion of our revenues from a small number of customers. While we have no one customer that accounts for more than 10% of our revenue, for each of the years ended December 31, 2021 and 2020, our ten largest customers accounted for approximately 26% of our revenues. Our ability to maintain close relationships with these and other major customers is essential to the growth and profitability of our business. However, the volume of work performed for a specific customer is likely to vary from year to year. A major customer in one year may not provide the same level of revenues for us in any subsequent year and there can be no assurance that any customer will extend or renew its contract with us. The business process solutions we provide to our customers, and the revenues and net income from those services, may decline or vary as the type and quantity of services we provide change over time. Furthermore, our reliance on any individual customer for a significant portion of our revenues may give that customer a certain degree of pricing leverage against us when negotiating contracts and terms of service.

In addition, a number of factors other than our performance could cause the loss of or reduction in business or revenues from a customer, and these factors are not predictable. For example, a customer may decide to reduce spending on business process solutions from us due to a challenging economic environment or other factors, both internal and external, relating to our business. These factors may include corporate restructuring, pricing pressure, changes to our outsourcing strategy, switching to another BPO provider or returning work in-house or other changes in a customer's

prospects or profitability. The risk of customer loss may be heightened as a result of recent economic volatility due to the COVID-19 pandemic. The loss of any of our major customers, or a significant decrease in the volume of work they give to us or the price at which we are able to provide our services to them, could materially adversely affect our revenues and thus our results of operations.

***Our revenues are highly dependent on a limited number of industries, and any decrease in demand for business process solutions in these industries could reduce our revenues and adversely affect the results of operations.***

A substantial portion of our revenues are derived from three specific industry based segments: ITPS, HS, and LLPS. Customers in ITPS accounted for 74.9% and 77.8% of our revenues in 2021 and 2020, respectively. Customers in HS accounted for 18.7% and 16.9% of our revenues in 2021 and 2020, respectively. Customers in LLPS accounted for 6.4% and 5.3% of our revenues in 2021 and 2020, respectively. Our success largely depends on continued demand for our services from customers in these segments, and a downturn or reversal of the demand for business process solutions in any of these segments, or the introduction of regulations that restrict or discourage companies from engaging our services, could materially adversely affect our business, financial condition and results of operations. For example, consolidation in any of these industries or combinations or mergers, particularly involving our customers, may decrease the potential number of customers for our services. We have been affected by the worsening of economic conditions and significant consolidation in the financial services industry and continuation of this trend may negatively affect our revenues and profitability. The COVID-19 pandemic, may lead to further increased consolidation in the financial services industry as larger, better capitalized competitors will be in a stronger position to withstand prolonged periods of economic downturn and sustain their business through the financial volatility.

***We derive significant revenue and profit from commercial and government contracts awarded through competitive bidding processes, including renewals, which can impose substantial costs on us, and we will not achieve revenue and profit objectives if we fail to accurately and effectively bid on such projects.***

Many of these contracts are extremely complex and require the investment of significant resources in order to prepare accurate bids and proposals. Competitive bidding imposes substantial costs and presents a number of risks, including: (i) the substantial cost and managerial time and effort that we spend to prepare bids and proposals for contracts that may or may not be awarded to us; (ii) the need to estimate accurately the resources and costs that will be required to implement and service any contracts we are awarded, sometimes in advance of the final determination of their full scope and design; (iii) the expense and delay that may arise if our competitors protest or challenge awards made to us pursuant to competitive bidding and the risk that such protests or challenges could result in the requirement to resubmit bids and in the termination, reduction or modification of the awarded contracts; and (iv) the opportunity cost of not bidding on and winning other contracts we might otherwise pursue. If our competitors protest or challenge an award made to us on a government contract, the costs to defend such an award may be significant and could involve subsequent litigation that could take years to resolve.

***Our profitability is dependent upon our ability to obtain adequate pricing for our services and to improve our cost structure.***

Our success depends on our ability to obtain adequate pricing for our services. Depending on competitive market factors, future prices we obtain for our services may decline from previous levels. If we are unable to obtain adequate pricing for our services, it could materially adversely affect our results of operations and financial condition. In addition, our contracts are increasingly requiring tighter timelines for implementation as well as more stringent service level metrics. This makes the bidding process for new contracts much more difficult and requires us to adequately consider these requirements in the pricing of our services.

We regularly review our operations with a view towards reducing our cost structure, including, without limitation, reducing our employee base, exiting certain businesses, improving process and system efficiencies and outsourcing some internal functions. We, from time to time, engage in restructuring actions to reduce our cost structure. If we are unable to continue to maintain our cost base at or below the current level and maintain process and systems changes resulting from prior restructuring actions or to realize the expected cost reductions in the ongoing strategic transformation program, it could materially adversely affect our results of operations and financial condition. In addition,



in order to meet the service requirements of our customers, which often includes 24/7 service, and to optimize our employee cost base, including our back-office support, we often locate our delivery service and back-office support centers in lower-cost locations, including several developing countries. Concentrating our centers in these locations presents a number of operational risks, many of which are beyond our control, including the risks of political instability, natural disasters, safety and security risks, labor disruptions, excessive employee turnover and rising labor rates. Additionally, a change in the political environment in the U.S. or the adoption and enforcement of legislation and regulations curbing the use of such centers outside of the U.S. could materially adversely affect our results of operations and financial condition. These risks could impair our ability to effectively provide services to our customers and keep our costs aligned to our associated revenues and market requirements.

Our ability to sustain and improve profit margins is dependent on a number of factors, including our ability to continue to improve the cost efficiency of our operations through such programs as robotic process automation, to absorb the level of pricing pressures on our services through cost improvements and to successfully complete information technology initiatives. If any of these factors adversely materialize or if we are unable to achieve and maintain productivity improvements through restructuring actions or information technology initiatives, our ability to offset labor cost inflation and competitive price pressures would be impaired, each of which could materially adversely affect our results of operations and financial condition.

***We are subject to regular customer and third-party security reviews and failure to pass these may have an adverse impact on our operations.***

Many of our customer contracts require that we maintain certain physical and/or information security standards, and, in certain cases, we permit a customer to audit our compliance with these contractual standards. Any failure to meet such standards or pass such audits may have a material adverse impact on our business. Further, customers from time to time may require stricter physical and/or information security than they negotiated in their contracts, and may condition continued volumes and business on the satisfaction of such additional requirements. Some of these requirements may be expensive to implement or maintain, and may not be factored into our contract pricing. Further, on an annual basis we obtain third-party audits of certain of our locations in accordance with Statement on Standards for Attestation Engagements No. 16 (SSAE 16) put forth by the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA). SSAE 16 is the current standard for reporting on controls at service organizations, and many of our customers expect that we will perform an annual SSAE 16 audit, and report to them the results. Negative findings in such an audit and/or the failure to adequately remediate in a timely fashion such negative findings may cause customers to terminate their contracts or otherwise have a material adverse effect on our reputation, results of operation and financial condition.

***Currency fluctuations among the Euro, British Pound, Swedish Krona, Indian rupee, the Philippine Peso, the Mexican Peso, the Canadian Dollar, the Chinese Yuan and the U.S. Dollar could have a material adverse effect on our results of operations.***

The functional currencies of our businesses outside of the U.S. are the local currencies. Changes in exchange rates between these foreign currencies and the U.S. Dollar will affect the recorded levels of our assets, liabilities, net sales, cost of goods sold and operating margins and could result in exchange gains or losses. The primary foreign currencies to which we have exposure are the European Union Euro, Swedish Krona, British Pound Sterling, Canadian Dollar and Indian rupees. Exchange rates between these currencies and the U.S. Dollar in recent years have fluctuated significantly and may do so in the future. Our operating results and profitability may be affected by any volatility in currency exchange rates and our ability to manage effectively currency transaction and translation risks. To the extent the U.S. Dollar strengthens against foreign currencies, our foreign revenues and profits will be reduced when translated into U.S. Dollars.

Although the vast majority of our revenues are denominated in U.S. dollars, a significant portion of our expenses are incurred and paid in Euros, British Pound Sterling, Swedish Krona, Indian rupees, and to a lesser extent in other currencies, including the Philippine Peso, the Mexican Peso, the Canadian dollar and the Chinese Yuan. We report our financial results in U.S. Dollars. The exchange rate between the Indian rupee and the U.S. Dollar has changed substantially in recent years and may fluctuate substantially in the future. Our results of operations may be adversely

affected if such fluctuations continue, or increase, or other currencies fluctuate significantly against the U.S. Dollar. Further, although we do not currently take steps to hedge our foreign currency exposures, should we choose in the future to implement a hedging strategy, there can be no assurance that our hedging strategy will be successful.

***Fluctuations in the costs of paper, ink, energy, by-products and other raw materials may adversely impact the results of our operations.***

Purchases of paper, ink, energy and other raw materials represent a large portion of our costs. Increases in the costs of these inputs may increase our costs and we may not be able to pass these costs on to customers through higher prices. In addition, we may not be able to resell waste paper and other print-related by-products or may be adversely impacted by decreases in the prices for these by-products. Increases in the cost of materials may adversely impact customers' demand for our printing and printing-related services.

***Sales tax laws in the U.S. may change resulting in service providers having to collect sales taxes in states where the current laws do not require us to do so. This could result in substantial tax liabilities.***

Our U.S. subsidiaries collect and remit sales tax in states in which the subsidiaries have physical presence or in which we believe sufficient nexus exists which obligates us to collect sales tax. Other states may, from time to time, claim that we have state-related activities constituting physical nexus to require such collection. Additionally, many other states seek to impose sales tax collection or reporting obligations on companies that sell goods to customers in their state, or directly to the state and its political subdivisions, regardless of physical presence. Such efforts by states have increased recently, as states seek to raise revenues without increasing the income tax burden on residents. We cannot predict whether the nature or level of contacts we have with a particular state will be deemed enough to require us to collect sales tax in that state nor can we be assured that Congress or individual states will not approve legislation authorizing states to impose tax collection or reporting obligations on our activities. A successful assertion by one or more states that we should collect sales tax could result in substantial tax liabilities related to past sales and would result in considerable administrative burdens and costs for us.

***We are subject to laws of the United States and foreign jurisdictions relating to processing certain financial transactions, including payment card transactions and debit or credit card transactions, and failure to comply with those laws could subject us to legal actions and materially adversely affect our results of operations and financial condition.***

We process, support and execute financial transactions, and disburse funds, on behalf of both government and commercial customers, often in partnership with financial institutions. This activity includes receiving debit and credit card information, processing payments for and due to our customers and disbursing funds on payment or debit cards to payees of our customers. As a result, the transactions we process may be subject to numerous United States (both federal and state) and foreign jurisdiction laws and regulations, including the Electronic Fund Transfer Act, as amended, the Currency and Foreign Transactions Reporting Act of 1970 (commonly known as the Bank Secrecy Act), as amended, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended, the Gramm-Leach-Bliley Act, as amended, and the USA PATRIOT ACT of 2001, as amended. Other United States (both federal and state) and foreign jurisdiction laws apply to our processing of certain financial transactions and related support services. These laws are subject to frequent changes, and new statutes and regulations in this area may be enacted at any time. Changes to existing laws, the introduction of new laws in this area or failure to comply with existing laws that are applicable to us may subject us to, among other things, additional costs or changes to our business practices, liability for monetary damages, fines and/or criminal prosecution, unfavorable publicity, restrictions on our ability to process and support financial transactions and allegations by our customers, partners and clients that we have not performed our contractual obligations. Any of these could materially adversely affect our results of operations and financial condition.

***We substantially increased the outstanding number of shares during 2021, substantially diluting existing shareholders' interests in Exela, and we may engage in dilutive transactions in the future.***

In 2021, we increased the outstanding shares of Common Stock from 49,242,225 at January 1, 2021 (adjusted to give effect for the 1:3 stock split on January 25, 2021) to 265,194,961 at December 31, 2021. The

increase in outstanding shares was due principally to the sale of additional shares for cash, and resulted in each share outstanding on January 1, 2021 representing less than 19% of its interest in the Company as of December 31, 2021. In addition, as of March 15, 2022, we had issued an additional 131,798,802 shares of common stock. Due to the need to repay existing indebtedness and fund operations, we may issue a material number of additional shares of Common Stock in the future, which would have the effect of further diluting existing shareholders. Such issuances, or market perception of the possibility of substantial future dilution, could make our stock less attractive to investors, including institutional investors, and could have a material adverse effect on the prices at which our stock trades.

### **General Risk Factors**

#### ***Our results of operations could in the future be materially adversely impacted by the coronavirus pandemic (COVID-19) or similar public health events.***

Our results of operations could in the future be materially adversely impacted by the coronavirus pandemic (COVID-19) or similar public health events. While we remain hopeful that the effects of the coronavirus pandemic on our world and our business will subside with increasing immunity and the continuing roll out of vaccines and new treatments, we continue to have two priorities: the safety and wellbeing of our employees and their families, and maintaining our ability to provide services to our customers in these unprecedented times. The global spread of the coronavirus (COVID-19) has created significant volatility and uncertainty and economic disruption. The extent to which the coronavirus pandemic will continue to impact our business, operations and financial results will depend on numerous evolving factors that we may not be able to accurately predict, including: the duration and scope of the pandemic; governmental, business and individuals' actions that have been and continue to be taken in response to the pandemic; the impact of the pandemic on economic activity and actions taken in response; the effect on our customers and customer demand for our services and solutions; our ability to sell and provide our services and solutions, including as a result of travel restrictions and people working from home; the ability of our customers to pay for our services and solutions; and any closures of our and our customers' offices and facilities. The spread of the coronavirus has caused us to modify our business practices (including employee travel, employee work locations, and cancellation of physical participation in meetings, events and conferences), and we may take further actions as may be required by government authorities or that we determine are in the best interests of our employees, customers and business partners.

#### ***Our results of operations could be adversely affected by economic and political conditions, creating complex risks, many of which are beyond our control.***

Our business depends on the continued demand for our services, and if current global economic conditions worsen, our business could be adversely affected by our customers' financial condition and level of business activity. Along with our customers we are subject to global political, economic and market conditions, including inflation, interest rates, energy costs, the impact of natural disasters, disease, military action and the threat of terrorism. In particular, we currently derive, and are likely to continue to derive, a significant portion of revenues from customers located in North America and EMEA. Any future decreases in the general level of economic activity in these markets, such as decreases in business and consumer spending and increases in unemployment rates as we experienced as a result of the COVID-19 pandemic, could result in a decrease in demand for our services, thus reducing our revenue. For example, certain customers may decide to reduce or postpone their spending on the services we provide, and we may be forced to lower our prices. Other developments in response to economic events, such as consolidations, restructurings or reorganizations, particularly involving our customers, could also cause the demand for our services to decline, negatively affecting the amount of business that we are able to obtain or retain. We may not be able to predict the impact such conditions will have on the industries we serve and may be unable to plan effectively for or respond to such impact. In response to economic and market conditions, from time to time we have undertaken or may undertake initiatives to reduce our cost structure where appropriate, such as consolidation of resources to provide functional region-wide support to our international subsidiaries in a centralized fashion. These initiatives, as well as any future workforce and facilities reductions we may implement, may not be sufficient to meet current and future changes in economic and market conditions and allow us to continue to achieve the growth rates expected. In addition, costs actually incurred in connection with certain restructuring actions may be higher than our estimates of such costs and/or may not lead to the anticipated cost savings.

In addition, any future disruptions or turbulence in the global credit markets may adversely affect our liquidity and financial condition, and the liquidity and financial condition of our customers. Such disruptions may limit our ability to access financing, increase the cost of financing needed to meet liquidity needs and affect the ability of our customers to use credit to purchase our services or to make timely payments to us, adversely affecting our financial condition and results of operations.

***Cybersecurity issues, vulnerabilities, and criminal activity resulting in a data or security breach could result in risks to our systems, networks, products, solutions and services resulting in liability or reputational damage.***

We collect and retain large volumes of internal and customer data, including personally identifiable information and other sensitive data both physically and electronically, for business purposes, and our various information technology systems enter, process, summarize and report such data. We also maintain personally identifiable information about our employees. Safeguarding customer, employee and our own data is a key priority for us, and our customers and employees have come to rely on us for the protection of their personal information. Augmented vulnerabilities, threats and more sophisticated and targeted cyber-related attacks pose a risk to our security and the security of our customers, partners, suppliers and third-party service providers, and to the confidentiality, availability and integrity of data owned by us or our customers. Despite our efforts to protect sensitive, confidential or personal data or information, we may be vulnerable to material security breaches, theft, misplaced or lost data, programming errors, employee errors and/or malfeasance that could potentially lead to the compromise of sensitive, confidential or personal data or information, improper use of our systems, software solutions or networks, unauthorized access, use, disclosure, modification or destruction of information, defective products, production downtimes and operational disruptions. Despite protective measures, we may not be successful in preventing security breaches which compromise the confidentiality and integrity of this data. While an attempt is made to mitigate these risks by employing a number of measures, including employee training, monitoring and testing, and maintenance of protective systems and contingency plans, we remain vulnerable to such threats. The risk of such threats may be heightened as a result of the extended period of remote work arrangements occasioned by the COVID-19 pandemic.

The sensitive, confidential or personal data or information that we have access to is also subject to privacy and security laws, regulations or customer-imposed controls. The regulatory environment, as well as the requirements imposed on us by the industries we serve governing information, security and privacy laws is increasingly demanding. Maintaining compliance with applicable security and privacy regulations may increase our operating costs and/or adversely impact our ability to provide services to our customers. Furthermore, a compromised data system or the intentional, inadvertent or negligent release or disclosure of data could result in theft, loss, fraudulent or unlawful use of customer, employee or our data which could harm our reputation or result in remedial and other costs, fines or lawsuits. In addition, a cyber-related attack could result in other negative consequences, including damage to our reputation or competitiveness, remediation or increased protection costs, litigation or regulatory action. Fraud, employee negligence, and unauthorized access, including, malfunctions, viruses and other events beyond our control, may lead to the misappropriation or unauthorized disclosure of sensitive or confidential information we process, store and transmit, including personal information, for our customers, failure to prevent or mitigate data loss or other security breaches, including breaches of our vendors' technology and systems, could expose us or our customers to a risk of loss or misuse of such information, adversely affect our operating results, result in litigation or potential liability for us and otherwise harm our business. As a result, we may be subject to monetary damages, regulatory enforcement actions or fines under federal legislation, such as, the Gramm-Leach-Bliley Act and HIPAA, as well as various states' laws, such as the California Consumer Privacy Act ("CCPA"), which became effective on January 1, 2020 or under the GDPR in Europe. Similarly, regulations such as the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 expand the obligations of "covered entities" and their business associates, including certain mandatory breach notification requirements. In addition to any legal liability, data or security breaches may lead to negative publicity, reputational damage and otherwise adversely affect the results of our operations.

***Our industry may be adversely impacted by a negative public reaction in the U.S. and elsewhere to providing certain of our services from outside the U.S. and related legislation.***

We have based our strategy of future growth on certain assumptions regarding our industry and future demand in the market for the provision of business process solutions in part using offshore resources. However, providing services from offshore locations is a politically sensitive topic in the U.S. and elsewhere, and many organizations and public figures have publicly expressed concern about a perceived association between offshore service providers and the loss of jobs in their home countries. In addition, there has been some publicity about the negative experience of certain companies that provide their services offshore, particularly in India. The trend of providing business process solutions offshore may not continue and could reverse if companies elect to develop and perform their business processes internally or are discouraged from transferring these services to offshore service providers. Any slowdown or reversal of existing industry trends could negatively affect the amount of business that we are able to obtain or retain and could have a material and adverse effect on our business, results of operations, financial condition and cash flows.

***If we fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired.***

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"), and the listing standards of the Nasdaq. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time consuming and costly, and place significant strain on our personnel, systems and resources. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers. We are also continuing to improve our internal control over financial reporting. In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we have expended, and anticipate that we will continue to expend, significant resources, including accounting-related costs and significant management oversight.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, weaknesses in our disclosure controls or our internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting also could adversely affect the results of management evaluations of our internal control over financial reporting that we are required to include in our periodic reports that we file with the SEC. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the trading price of our Common Stock. In addition, if we are unable to meet these requirements, we may not be able to remain listed on the Nasdaq.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2021 and based on its assessment, our management, including our CEO and CFO, has concluded that our internal control over financial reporting was not effective as of December 31, 2021 due to material weaknesses in our internal control over financial reporting. Any failure to maintain effective disclosure controls and internal control over financial reporting could have a material and adverse effect on our business and operating results and cause a decline in the price of our Common Stock.

Internal control matters are more fully discussed in Part II—Item 9A—Controls and Procedures of this Annual Report.

***If we are unable to attract, train and retain skilled professionals, including highly skilled technical personnel to satisfy customer demand and senior management to lead our business globally, our business and results of operations may be materially adversely affected.***

Our success is dependent, in large part, on our ability to keep our supply of skilled professionals, including project managers, IT engineers and senior technical personnel, in balance with customer demand around the world and on our ability to attract and retain senior management with the knowledge and skills to lead our business globally. Each year, we must hire several hundred new professionals and retrain, retain, and motivate our workforce across the globe. Competition for skilled labor is intense and, in some jurisdictions in which we operate, there are more jobs for certain professionals than qualified persons to fill these jobs. Costs associated with recruiting and training professionals can be significant. If we are unable to hire or deploy employees with the needed skillsets or if we are unable to adequately equip our employees with the skills needed, this could materially adversely affect our business. Additionally, if we are unable to maintain an employee environment that is competitive and contemporary, it could have an adverse effect on engagement and retention, which may materially adversely affect our business. If more stringent labor laws become applicable to us or if a significant number of our employees unionize, our profitability may be adversely affected.

Increased labor costs due to competition, increased minimum wage or employee benefits costs (including various federal, state and local actions to increase minimum wages), unionization activity or other factors would adversely impact our cost of sales and operating expenses. For example, as minimum wage rates increase, we may need to increase not only the wages of our minimum wage employees but also the wages paid to employees at wage rates that are above minimum wage. As a result, we anticipate that our labor costs will continue to increase.

We are also subject to applicable rules and regulations relating to our relationship with our employees, including minimum wage and break requirements, health benefits, unemployment and sales taxes, overtime, and working conditions and immigration status. Legislated increases in the minimum wage and increases in additional labor cost components, such as employee benefit costs, workers' compensation insurance rates, compliance costs and fines, as well as the cost of litigation in connection with these regulations, would increase our labor costs. Should our employees become represented by unions, we would be obligated to bargain with those unions with respect to wages, hours, and other terms and conditions of employment, which could increase our labor costs. Moreover, as part of the process of union organizing and collective bargaining, strikes and other work stoppages may occur, which could cause disruption to our business. In addition, many employers have been subject to actions brought by governmental agencies and private individuals under wage-hour laws on a variety of claims, such as improper classification of workers as exempt from overtime pay requirements and failure to pay overtime wages or record breaks properly, with such actions sometimes brought as class actions or under "private attorney general" statutes. These actions can result in material liabilities and expenses. Should we be subject to employment litigation, such as actions involving wage-hour, overtime, break, and working time, we may distract our management from business matters and result in increased labor costs. If costs of labor increase significantly, our business, results of operations, and financial condition may be adversely affected.

***New, more stringent privacy and data security regulations may have a negative impact on our business.***

Any inability to adequately address privacy and security concerns could result in expenses and liability, and adverse impact on us. Moreover, international privacy and data security regulations may become more complex and have greater consequences. The EU's General Data Protection Regulation, or GDPR, governs the collection and use of personal data of data subjects in the EU and extra territorially as well, and imposes several stringent requirements for controllers and processors of personal data, including, for example, higher standards for obtaining consent from individuals to process their personal data, more robust disclosures to individuals and a strengthened individual data rights regime, shortened timelines for data breach notifications, limitations on retention of information, increased requirements pertaining to health data, other special categories of personal data and pseudonymized (i.e., key-coded) data and additional obligations when we contract third-party processors in connection with the processing of the personal data. The GDPR provides that EU member states may make their own further laws and regulations limiting the processing of personal data, including genetic, biometric or health data, which could limit our ability to use and share personal data or could cause our costs could increase, and harm our business and financial condition. Failure to comply with the requirements of GDPR and the applicable national data protection laws of the EU Member States may result in



finances of up to €20,000,000 or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher, and other administrative penalties.

Similar to the GDPR, the CCPA, grants California residents with several rights relating to their personal information. The CCPA applies to businesses that conduct business in California and satisfies one of three financial conditions, including a business that has a gross revenue greater than \$25 million. The CCPA sets forth several data protection obligations for applicable businesses, including, but not limited to the obligations to inform a consumer, at or before collection, of the purpose and intended use of the collection; and to delete a consumer's personal information upon request. As for penalties and fines, the CCPA establishes a private right of action for serious data breaches, which allows consumers the right to seek damages. The CCPA also allows the California Attorney General to bring actions against non-compliant businesses with fines of \$2,500 per violation or, if intentional, up to \$7,500 per violation.

Any future failure by us to comply with the GDPR and/or CCPA could have a material adverse effect on our business, results of operations or financial condition. Further, as the GDPR and CCPA have recently come into effect, enforcement priorities and interpretation of certain provisions are still unclear. Industry groups also impose self-regulatory standards that bind us by their incorporation into the contracts we execute. For example, should we fail to be compliant with the PCIDSS we may be subject to fines and other penalties.

***Failure to comply with the U.S. Foreign Corrupt Practices Act, or the FCPA, economic and trade sanctions, regulations, and similar laws could subject us to penalties and other adverse consequences.***

We operate internationally, and we are subject to anti-corruption laws and regulations, including the FCPA, the U.K. Bribery Act and other laws that prohibit the making or offering of improper payments to foreign government officials and political figures, including anti-bribery provisions enforced by the Department of Justice and accounting provisions enforced by the SEC. These laws prohibit improper payments or offers of payments to foreign governments and their officials and political parties by the U.S. and other business entities for the purpose of obtaining or retaining business. We have implemented policies to identify and address potentially impermissible transactions under such laws and regulations; however, there can be no assurance that all of our and our subsidiaries' employees, consultants, and agents, including those that may be based in or from countries where practices that violate U.S. or other laws may be customary, will not take actions in violation of our policies, for which we may be ultimately responsible. We are also subject to certain economic and trade sanctions programs that are administered by the Department of Treasury's Office of Foreign Assets Control, or OFAC, which prohibit or restrict transactions to or from or dealings with specified countries, their governments, and in certain circumstances, their nationals, and with individuals and entities that are specially-designated nationals of those countries, narcotics traffickers, and terrorists or terrorist organizations. Our subsidiaries may be subject to additional foreign or local sanctions requirements in other relevant jurisdictions.

***Changes in laws or regulations, or a failure to comply with any laws and regulations, may adversely affect our business, investments and results of operations.***

We are subject to laws, regulations and rules enacted by national, regional and local governments and Nasdaq. In particular, we are required to comply with certain SEC, Nasdaq and other legal or regulatory requirements. Compliance with, and monitoring of, applicable laws, regulations and rules may be difficult, time consuming and costly. Those laws, regulations and rules and their interpretation and application may also change from time to time and those changes could have a material adverse effect on our business, investments and results of operations. In addition, a failure to comply with applicable laws, regulations and rules, as interpreted and applied, could have a material adverse effect on our business and results of operations.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## ITEM 2. PROPERTIES

We lease and own numerous facilities worldwide with larger concentrations of space in Texas, Michigan, Connecticut, California, India, Mexico, the Philippines, and China. The size of our active property portfolio as of December 31, 2021 was approximately 3 million square feet (sq. ft.) and comprised of 122 leased properties and 8 owned properties including offices, sales offices, service locations, and production facilities. Many of our operating facilities are equipped with fiber connectivity and have access to other power sources. Substantially all of our operations facilities are leased under long term leases with varying expiration dates, except for the following owned locations: (i) two operations facilities in India with a combined building area of approximately 78,000 sq. ft., respectively, (ii) an operating facility in Georgiana, Alabama with an approximate building area of 20,000 sq. ft., (iii) an operating facility in Tallahassee, Florida consisting of four buildings with a combined building area of approximately 21,000 sq. ft., (iv) an operating facility in Troy, Michigan that will serve as the Company's primary data center with an approximate building area of 66,000 sq. ft. (v) an operating facility in Egham, England with an approximate building area of 11,000 sq. ft., and (vi) an innovation center in New York, NY with an approximate building area of 2,200 sq. ft. We also maintain an operating presence at approximately 800 customer sites.

Our properties are suitable to deliver services to our customers for each of our business segments. Our management believes that all of our properties and facilities are well maintained.

## ITEM 3. LEGAL PROCEEDINGS

### *Appraisal Action*

On September 21, 2017, former stockholders of SourceHOV, who owned 10,304 shares of SourceHOV common stock, filed an Appraisal Action. The Appraisal Action arose out of a preliminary transaction in connection with the Novitex Business Combination, and the petitioners sought, among other things, a determination of the fair value of their shares at the time of the Novitex Business Combination; an order that SourceHOV pay that value to the petitioners, together with interest at the statutory rate; and an award of costs, attorneys' fees, and other expenses. During the trial the parties and their experts offered competing valuations of the SourceHOV shares as of the date of the Novitex Business Combination. SourceHOV argued the value was no more than \$1,633.85 per share and the petitioners argued the value was at least \$5,079.28 per share. On January 30, 2020, the Court issued its post-trial Memorandum Opinion in the Appraisal Action, in which it found that the fair value of SourceHOV as of the date of the Novitex Business Combination was \$4,591 per share, and on March 26, 2020, the Court issued its final order awarding the petitioners \$57,698,426 inclusive of costs and interest. Per the Court's opinion, the legal rate of interest, compounded quarterly, accrues on the per share value from the July 2017 closing date of the Novitex Business Combination until the date of payment to petitioners.

SourceHOV appealed the judgment in the Appraisal Action on September 30, 2020. On January 22, 2021, the Delaware Supreme Court affirmed the judgment of the Delaware Court of Chancery in favor of the petitioners.

The petitioners filed several additional actions to recognize the judgment against SourceHOV, including an action alleging unjust enrichment and seeking restitution and to pierce the corporate veil and seek alter ego liability against Exela Technologies, Inc. and over 50 alleged subsidiaries and/or affiliates in an attempt to collect the award in the Appraisal Action from entities other than SourceHOV, and an action against SourceHOV and certain of its directors and officers alleging creditor derivative claims relating to the Company's securitization facilities..

On December 31 2021, SourceHOV agreed to settle the Appraisal Action along with a separate case brought by the same plaintiffs for \$63.4 million. Accordingly, as of December 31, 2021, the Company accrued a liability of \$63.4 million for these matters, all of which is expected to be paid during the first half of 2022 (\$40 million having already been paid as of March 16, 2022).



#### *Class Action*

On March 23, 2020, the Plaintiff, Bo Shen, filed a putative class action against the Company, Ronald Cogburn, the Company's Chief Executive Officer, and James Reynolds, the Company's former Chief Financial Officer. Plaintiff claims to be a current holder of 1,333 shares of Company stock, purchased on October 4, 2019 at \$4.02/share. Plaintiff asserts two claims covering the purported class period of March 16, 2018 to March 16, 2020: (1) a violation of Section 10(b) and Rule 10b-5 of the Exchange Act against all defendants; and (2) a violation of Section 20(a) of the Exchange Act against Mr. Cogburn and Mr. Reynolds. The allegations stem from the Company's press release, dated March 16, 2020 (announcing the postponement of the earnings call and delay in filing of its annual report on Form 10-K for the fiscal year ended December 31, 2019), and press release and related SEC filings, dated March 17, 2020 (announcing its intent to restate its financial statements for 2017, 2018 and interim periods through September 30, 2019). The Company moved to dismiss the case and the Company's motion was granted in its entirety on June 24, 2021. Plaintiffs filed an amended complaint by the Court's deadline on August 5, 2021, and the Company moved to dismiss this amended complaint on September 3, 2021, which dismissal was denied on January 21, 2022, permitting the case to move forward. At this time, it is not practicable to render an opinion about whether an unfavorable outcome is probable or remote with respect to this matter; however, the Company believes it has meritorious defenses and will continue to vigorously assert them.

#### *Derivative Action*

On July 8, 2020 Plaintiff Gregory McKenna filed a shareholder derivative action asserting the following claims against current and former directors and officers of Exela: (1) Violations of Section 14(a) of the Exchange Act; (2) Violations of Section 10(b) and Rule 10b-5 of the Exchange Act; (3) Violations of Section 20(a) of the Exchange Act; (4) breach of fiduciary duty; (5) unjust enrichment; and (6) waste of corporate assets. On December 21, 2020, Plaintiffs Richard W. Moser and Jonathan Gonzalez filed a substantially similar shareholder derivative action, which has been consolidated with the McKenna action. The claims stem from substantially the same factual allegations set forth in the Shen securities class action lawsuit, described above. At this time, it is not practicable to render an opinion about whether an unfavorable outcome is probable or remote with respect to this matter; however, the Company believes it has meritorious defenses and will vigorously assert them.

#### *Other*

We are, from time to time, involved in other legal proceedings, inquiries, claims and disputes, which arise in the ordinary course of business. Although our management cannot predict the outcomes of these matters, our management believes these actions will not have a material, adverse effect on our financial position, results of operations or cash flows.

On March 3, 2022, a plaintiff filed a shareholder derivative action alleging that the amendment of the Company's 2018 Stock Incentive Plan (reported elsewhere in this Annual Report) was not properly approved in accordance with Exela's bylaws. At this time, it is not practicable to render an opinion about whether an unfavorable outcome is probable or remote with respect to this matter; however, the Company believes the relief sought would have minimal impact on the financial statements, and in any event, that it has meritorious defenses to the claims alleged.

#### **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 under the symbol “XELA”.

**Stockholders**

As of March 15, 2022 we had 77 record holders of our Common Stock. We estimate there approximately 90,000 beneficial owners of Common Stock.

**Dividends**

We have not paid any cash dividends on shares of our Common Stock. The payment of cash dividends in the future will be dependent upon our revenues and earnings, capital requirements, general financial condition, and is within the discretion of our board of directors.

**Equity Compensation Plan Information**

The following table provides information as of December 31, 2021, with respect to the shares of our Common Stock that may be issued under our existing equity compensation plans.

<b>Plan Category</b>	<b>Number of Securities to be Issued Upon Exercise of Outstanding Options, RSUs and Market Performance Units</b>	<b>Weighted Average Exercise Price of Outstanding Options</b>	<b>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans(1)</b>
Equity compensation plans approved by stockholders	11,314,307	11.78	6,216,221
Equity compensation plans not approved by stockholders	—	—	—
<b>Total</b>	<b>11,314,307</b>	<b>11.78</b>	<b>6,216,221</b>

- (1) The Company currently maintains the 2018 Stock Incentive Plan, which was approved by our board of directors on December 19, 2017 and subsequently approved by a majority of our stockholders by written consent on December 20, 2017. The 2018 Stock Incentive Plan became effective on January 17, 2018 and there were originally 2,774,589 shares of our Common Stock reserved for issuance under our 2018 Stock Incentive Plan. On December 31, 2021, the shareholders of the Company approved our Amended and Restated 2018 Stock Incentive Plan increasing the number of shares of Common Stock reserved for issuance from an original 2,774,589 shares to 17,848,076.

**Sale of Unregistered Securities**

There were no unregistered sales of equity securities in 2021 that have not been previously reported in a Quarterly Report on Form 10-Q or Current Report on Form 8-K.

**Issuer Purchases of Equity Securities During the Year Ended December 31, 2021**

There was no share repurchase activity during the year ended December 31, 2021.

**ITEM 6. [Reserved]**

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

***Forward Looking Statements***

*The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with a review of the other Items included in this Annual Report and our December 31, 2021 Consolidated Financial Statements included elsewhere in this report. Certain statements contained in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" may be deemed to be forward-looking statements. See "Special Note Regarding Forward-Looking Statements."*

**Overview**

We are a global provider of transaction processing solutions, enterprise information management, document management and digital business process services. Our technology-enabled solutions allow global organizations to address critical challenges resulting from the massive amounts of data obtained and created through their daily operations. Our solutions address the life cycle of transaction processing and enterprise information management, from enabling payment gateways and data exchanges across multiple systems, to matching inputs against contracts and handling exceptions, to ultimately depositing payments and distributing communications. We believe our process expertise, information technology capabilities and operational insights enable our customers' organizations to more efficiently and effectively execute transactions, make decisions, drive revenue and profitability, and communicate critical information to their employees, customers, partners, and vendors.

**History**

We are a former special purpose acquisition company that completed our initial public offering on January 22, 2015. In July 2017, Exela Technologies, Inc. ("Exela"), formerly known as Quinpario Acquisition Corp. 2 ("Quinpario"), completed its acquisition of SourceHOV Holdings, Inc. ("SourceHOV") and Novitex Holdings, Inc. ("Novitex") pursuant to the business combination agreement dated February 21, 2017 ("Novitex Business Combination"). In conjunction with the completion of the Novitex Business Combination, Quinpario was renamed Exela Technologies, Inc.

The Novitex Business Combination was accounted for as a reverse merger for which SourceHOV was determined to be the accounting acquirer. Outstanding shares of SourceHOV were converted into our Common Stock, presented as a recapitalization, and the net assets of Quinpario were acquired at historical cost, with no goodwill or other intangible assets recorded. The acquisition of Novitex was treated as a business combination under ASC 805 and was accounted for using the acquisition method. The strategic combination of SourceHOV and Novitex formed Exela, which is one of the largest global providers of information processing solutions based on revenues.

***Sale of Non-core Assets***

On March 16, 2020, the Company and its indirect wholly owned subsidiaries, Merco Holdings, LLC and SourceHOV Tax, LLC entered into a Membership Interest Purchase Agreement with Gainline Source Intermediate Holdings LLC at which time Gainline Source Intermediate Holdings LLC acquired all of the outstanding membership interests of SourceHov Tax, LLC for \$40.0 million subject to adjustment as set forth in the purchase agreement. On July 22, 2020, the Company completed the sale of its physical records storage and logistics business for a purchase price of \$12.3 million.

### *Reverse Stock Split*

On January 25, 2021, we effected a one-for-three reverse split of our issued and outstanding shares of our Common Stock. At the effective time of the reverse split, every three (3) shares of Common Stock issued and outstanding were automatically combined into one (1) share of issued and outstanding Common Stock, without any change in the par value per share. Our Common Stock began trading on the Nasdaq on a Reverse Stock Split-adjusted basis on January 26, 2021. There was no change in our ticker symbol as a result of the Reverse Stock Split.

### **Our Segments**

Our three reportable segments are Information & Transaction Processing Solutions (“ITPS”), Healthcare Solutions (“HS”), and Legal & Loss Prevention Services (“LLPS”). These segments are comprised of significant strategic business units that align our TPS and EIM products and services with how we manage our business, approach our key markets and interact with our customers based on their respective industries.

**ITPS:** Our largest segment, ITPS, provides a wide range of solutions and services designed to aid businesses in information capture, processing, decisioning and distribution to customers primarily in the financial services, commercial, public sector and legal industries. Our major customers include many leading banks, insurance companies, and utilities, as well as hundreds of federal, state and government entities. Our ITPS offerings enable companies to increase availability of working capital, reduce turnaround times for application processes, increase regulatory compliance and enhance consumer engagement.

**HS:** HS operates and maintains a consulting and outsourcing business specializing in both the healthcare provider and payer markets. We serve the top healthcare insurance payers and hundreds of healthcare providers.

**LLPS:** Our LLPS segment provides a broad and active array of support services in connection with class action, bankruptcy labor, claims adjudication and employment and other legal matters. Our customer base consists of corporate counsel, government attorneys, and law firms.

### **Revenues**

ITPS revenues are primarily generated from a transaction-based pricing model for the various types of volumes processed, licensing and maintenance fees for technology sales, and a mix of fixed management fee and transactional revenue for document logistics and location services. HS revenues are primarily generated from a transaction-based pricing model for the various types of volumes processed for healthcare payers and providers. LLPS revenues are primarily based on time and materials pricing as well as through transactional services priced on a per item basis.

### **People**

We draw on the business and technical expertise of our talented and diverse global workforce to provide our customers with high-quality services. Our business leaders bring a strong diversity of experience in our industry and a track record of successful performance and execution.

As of December 31, 2021, we had approximately 17,000 employees globally, with 54% located in Americas and EMEA, and the remainder located primarily in India, the Philippines and China.

Costs associated with our employees represent the most significant expense for our business. We incurred personnel costs of \$542.6 million, \$632.4 million and \$721.9 million for the years ended December 31, 2021, 2020 and 2019, respectively. The majority of our personnel costs are variable and are incurred only while we are providing our services.

## **Facilities**

We lease and own numerous facilities worldwide with larger concentrations of space in Texas, Michigan, Connecticut, California, India, Mexico, the Philippines, and China. Our owned and leased facilities house general offices, sales offices, service locations, and production facilities.

The size of our active property portfolio as of December 31, 2021 was approximately 3 million square feet, down by approximately 0.9 million square feet compared to December 31, 2020. As of December 31, 2021, our active property portfolio comprised of 122 leased properties and 8 owned properties. We reduced our active portfolio of leased properties by 21 properties during 2021 with the adoption of our work from anywhere program.

We believe that our current facilities are suitable and adequate for our current businesses. Because of the interrelation of our business segments, each of the segments uses substantially all of these properties at least in part.

## **Key Performance Indicators**

We use a variety of operational and financial measures to assess our performance. Among the measures considered by our management are the following:

- Revenue by segment;
- EBITDA; and
- Adjusted EBITDA.

## **Revenue**

We analyze our revenue by comparing actual monthly revenue to internal projections and prior periods across our operating segments in order to assess performance, identify potential areas for improvement, and determine whether segments are meeting management's expectations.

## **EBITDA and Adjusted EBITDA**

We view EBITDA and Adjusted EBITDA as important indicators of performance of our consolidated operations. We define EBITDA as net income, plus taxes, interest expense, and depreciation and amortization. We define Adjusted EBITDA as EBITDA plus optimization and restructuring charges, including severance and retention expenses; transaction and integration costs; other non-cash charges, including non-cash compensation, (gain) or loss from sale or disposal of assets, and impairment charges; and management fees and expenses. See "—Other Financial Information (Non-GAAP Financial Measures)" for more information and a reconciliation of EBITDA and Adjusted EBITDA to net loss, the most directly comparable financial measure calculated and presented in accordance with GAAP.

**Results of Operations****Year Ended December 31, 2021, Compared to Year Ended December 31, 2020**

	Year Ended December 31,	
	2021	2020
Revenue:		
ITPS	\$ 874,126	\$ 1,005,043
HS	217,839	219,047
LLPS	74,641	68,472
Total revenue	1,166,606	1,292,562
Cost of revenue (exclusive of depreciation and amortization):		
ITPS	672,191	815,013
HS	163,445	159,917
LLPS	53,459	48,614
Total cost of revenues	889,095	1,023,544
Selling, general and administrative expenses (exclusive of depreciation and amortization)	169,781	186,104
Depreciation and amortization	77,150	93,953
Related party expense	9,191	5,381
Operating profit (loss)	21,389	(16,420)
Interest expense, net	168,048	173,878
Debt modification and extinguishment costs (gain), net	(16,689)	9,589
Sundry expense (income), net	363	(153)
Other expense (income), net	401	(34,788)
Net loss before income taxes	(130,734)	(164,946)
Income tax expense	(11,656)	(13,584)
Net loss	\$ (142,390)	\$ (178,530)

**Revenue**

For the year ended December 31, 2021, our revenue on a consolidated basis decreased by \$126.0 million, or 9.7%, to \$1,166.6 million from \$1,292.6 million for the year ended December 31, 2020. We experienced revenue decline in our ITPS segment and HS segment of \$130.9 million and \$1.2 million, respectively while revenue increased in our LLPS segment by \$6.2 million. Our ITPS, HS, and LLPS segments constituted 74.9%, 18.7%, and 6.4% of total revenue, respectively, for the year ended December 31, 2021, compared to 77.8%, 16.9%, and 5.3%, respectively, for the year ended December 31, 2020. The revenue changes by reporting segment were as follows:

ITPS—Revenue attributable to our ITPS segment was \$874.1 million for the year ended December 31, 2021 compared to \$1,005.0 million for the year ended December 31, 2020. The revenue decline of \$130.9 million, or 13.0%, is primarily attributable to lower volumes and underutilization of resources as a result of COVID-19 in addition to the impact of exiting contracts and statements of work with certain customers that we believe was unpredictable, non-recurring and were not a strategic fit to Company's long-term success or unlikely to achieve the Company's long-term target margins ("transition revenue").

HS—For the year ended December 31, 2021, revenue attributable to our HS segment decreased by \$1.2 million, or 0.6%, to \$217.8 million from \$219.0 million for the year ended December 31, 2020. The decrease in revenue was primarily driven by lower transaction volumes from the impact of COVID-19 on our healthcare customers.

LLPS—Revenue attributable to our LLPS segment was \$74.6 million for the year ended December 31, 2021 compared to \$68.5 million for the year ended December 31, 2020. The increase in revenue by \$6.2 million, or 9.0%, is primarily due to an increase in legal claims administration services.

### ***Cost of Revenue***

For the year ended December 31, 2021, our cost of revenue decreased by \$134.4 million, or 13.1%, compared to the year ended December 31, 2020. In our ITPS and HS segments, the decrease was primarily attributable to the corresponding decline in revenues and operational efficiencies. Costs to our ITPS segment decreased by \$142.8 million, or 17.5% while costs related to our HS and LLPS segments increased by \$3.5 million, or 2.2% and \$4.8 million, or 10.0%, respectively.

The decrease in cost of revenues on a consolidated basis was primarily due to a decrease in employee-related costs of \$77.7 million, lower travel costs of \$1.2 million, lower infrastructure and maintenance costs of \$26.0 million and lower pass through and other operating costs of \$29.6 million which primarily include supplies, cost of products, service expenses, postage and delivery. The lower costs were attributable to cost and capacity management as a result of COVID-19 and transition revenue impact during the year ended December 31, 2021.

Cost of revenue for the year ended December 31, 2021 was 76.2% of revenue compared to the 79.2% of revenue for the comparable same period in the prior year. The decrease in cost of revenues, as a percentage of revenues by 3.0% was primarily due to the impact of lower costs related to transition revenue that continues to be gradually removed to further improve the gross margin profile of the business.

### ***Selling, General and Administrative Expenses***

SG&A expenses decreased \$16.3 million, or 8.8%, to \$169.8 million for the year ended December 31, 2021, compared to \$186.1 million for the year ended December 31, 2020. The decrease was primarily attributable to lower employee related costs by \$15.5 million, lower travel costs of \$0.5 million, lower legal and professional fees of \$2.0 million, lower infrastructure, maintenance and operating costs of \$6.3 million, offset by higher other costs of \$7.9 million that included a charge of \$3.8 million for a settlement loss on our LLPS segment. SG&A expenses increased as a percentage of revenues to 14.6% for the year ended December 31, 2021 as compared to 14.4% for the year ended December 31, 2020.

### ***Depreciation & Amortization***

Total depreciation and amortization expense was \$77.1 million and \$94.0 million for the years ended December 31, 2021 and 2020, respectively. The decrease in total depreciation and amortization expense by \$16.8 million was primarily due to a reduction in depreciation expense as a result of the expiration of the lives of assets acquired in prior periods and decrease in intangibles amortization expense due to end of useful lives for certain intangible assets during the year ended December 31, 2021 compared to the year ended December 31, 2020.

### ***Related Party Expenses***

Related party expense was \$9.2 million for the year ended December 31, 2021 compared to \$5.4 million for the year ended December 31, 2020. The increase in expense is due to higher amount of fees payable to Rule 14, LLC under the master service agreement for higher usage of services.

### ***Interest Expense***

Interest expense was \$168.0 million for the year ended December 31, 2021 compared to \$173.9 million for the year ended December 31, 2020. The decrease in interest costs was partially attributable to lower interest on senior secured term loan facility and other interest accruals incurred during the year ended December 31, 2020.

### ***Debt Modification and Extinguishment Costs (Gain), net***

A net gain of \$16.7 million for the year ended December 31, 2021 compared to a net loss of \$9.6 million for the year ended December 31, 2020.



For the year ended December 31, 2021, the Company recorded a gain on early extinguishment of debt of \$30.6 million in connection with the repurchases of senior secured term loans and secured 2023 notes. This gain was offset by \$12.9 million in modification of debt under ASC 470-50 for the cost of exchange of notes under the Public Exchange in December of 2021.

The Company recognized \$1.3 million and \$8.3 million in debt extinguishment costs during 2020, for the partial debt extinguishment resulting from amendment to the senior secured term loan in 2020 and the extinguishment of A/R Facility, respectively.

***Sundry Expense (Income), net***

The increase in income by \$0.5 million over the prior year period was primarily attributable to exchange rate fluctuations on foreign currency transactions.

***Other Expense (Income), net***

Other expense, net was \$0.4 million for the year ended December 31, 2021 compared to other income of \$34.8 million for the year ended December 31, 2020. Other income for the year ended December 31, 2020 was primarily due to the Company's divestment in SourceHOV Tax, LLC as part of our strategic plan to sell non-core business assets as well as gains on the sale of physical records storage and logistics business.

***Income Tax Expense***

We had an income tax expense of \$11.7 million for the year ended December 31, 2021 compared to income tax expense of \$13.6 million for the year ended December 31, 2020. The decrease in tax expense from the prior year was attributable to the impact of the change in our judgment in 2021 related to the realizability of deferred tax assets in certain state and foreign jurisdictions.

**Results of Operations****Year Ended December 31, 2020, Compared to Year Ended December 31, 2019**

	Year Ended December 31,	
	2020	2019
Revenue:		
ITPS	\$ 1,005,043	\$ 1,234,284
HS	219,047	256,721
LLPS	68,472	71,332
Total revenue	1,292,562	1,562,337
Cost of revenue (exclusive of depreciation and amortization):		
ITPS	815,013	1,001,655
HS	159,917	180,045
LLPS	48,614	43,035
Total cost of revenues	1,023,544	1,224,735
Selling, general and administrative expenses (exclusive of depreciation and amortization)	186,104	198,864
Depreciation and amortization	93,953	100,903
Impairment of goodwill and other intangible assets	—	349,557
Related party expense	5,381	9,501
Operating profit (loss)	(16,420)	(321,223)
Interest expense, net	173,878	163,449
Debt modification and extinguishment costs (gain), net	9,589	1,404
Sundry expense (income), net	(153)	969
Other expense (income), net	(34,788)	14,429
Net loss before income taxes	(164,946)	(501,474)
Income tax expense	(13,584)	(7,642)
Net loss	\$ (178,530)	\$ (509,116)

**Revenue**

For the year ended December 31, 2020, our revenue decreased by \$269.8 million, or 17.3%, to \$1,292.6 million from \$1,562.3 million for the year ended December 31, 2019. We experienced revenue declines in all of our segments primarily due to lower transaction volumes since mid-March as a result of COVID-19. Our ITPS, HS, and LLPS segments constituted 77.8%, 16.9%, and 5.3% of total revenue, respectively, for the year ended December 31, 2020, compared to 79.0%, 16.4%, and 4.6%, respectively, for the year ended December 31, 2019. The revenue changes by reporting segment were as follows:

ITPS— For the year ended December 31, 2020, revenue attributable to our ITPS segment decreased by \$229.2 million, or 18.6% compared to the same period in the prior year. The majority of this revenue decline is attributable to exiting contracts and statements of work in late 2019 from certain customers with revenue that we believe was unpredictable, non-recurring and were not a strategic fit to Company’s long-term success or unlikely to achieve the Company’s long-term target margins (“transition revenue”) in addition to lower transaction volumes since mid-March as a result of COVID-19.

HS— For the year ended December 31, 2020, revenue attributable to our HS segment decreased by \$37.7 million, or 14.7% compared to the same period in the prior year primarily due to impact of COVID-19 on our healthcare customers.

LLPS— For the year ended December 31, 2020, revenue attributable to our LLPS segment decreased by \$2.9 million, or 4.0% compared to the same period in the prior year primarily due to a decline in legal claims administration services.

### ***Cost of Revenue***

For the year ended December 31, 2020, our direct costs decreased by \$201.2 million, or 16.4%, compared to the year ended December 31, 2019. In our ITPS and HS segments, the decrease was primarily attributable to the corresponding decline in revenues. Costs on ITPS segment decreased by \$186.6 million, or 18.6%, and HS segment decreased by \$20.1 million, or 11.2%. Costs on LLPS segment increased by \$5.6 million, or 13.0%.

The decrease in cost of revenues was primarily due to a decrease in employee-related costs of \$103.1 million, lower travel costs of \$4.4 million, lower infrastructure and maintenance costs of \$17.6 million and other operating costs of \$29.5 million. The lower costs were attributable to cost and capacity management as a result of COVID-19 and transition revenue impact during the year ended December 31, 2020. Cost of revenue includes accelerated amortization of \$3.7 million for an operating lease right-of-use asset as the Company decided to permanently close one of its production facilities.

Cost of revenue for the year ended December 31, 2020 was 79.2% compared to 78.4% for the comparable same period in the prior year. The increase in cost of revenues, as a percentage of revenues by 0.8% was primarily due to the impact of costs related to the transition revenue that we expect to be gradually removed to further improve the gross margin profile of the business.

### ***Selling, General and Administrative Expenses***

SG&A expenses decreased \$12.7 million, or 6.4%, to \$186.1 million for the year ended December 31, 2020, compared to \$198.9 million for the year ended December 31, 2019. The decrease was primarily attributable to lower employee related costs by \$13.0 million, lower travel costs of \$4.0 million, lower infrastructure and maintenance costs of \$1.8 million and lower other costs of \$4.3 million offset by higher professional fees of \$10.4 million.

SG&A expenses increased as a percentage of revenues to 14.4% in 2020 as compared to 12.7% in 2019. The increase, as a percentage of revenues by 1.7%, was primarily due to the decline in revenues brought on by the COVID-19 pandemic and the transition revenue.

### ***Depreciation & Amortization***

Total depreciation and amortization expense was \$94.0 million and \$100.9 million for the year ended December 31, 2020 and 2019, respectively. The decrease in total depreciation and amortization expense by \$7.0 million was primarily due to a reduction in depreciation expense as a result of the expiration of the lives of assets acquired in prior periods and decrease in intangibles amortization expense due to end of useful lives for certain intangible assets during the year ended December 31, 2020 compared to the year ended December 31, 2019.

### ***Impairment of Goodwill and Other Intangible Assets***

The Company recorded no impairment of goodwill and other intangible assets during the year 2020. Impairment of goodwill and other intangible assets for the year ended December 31, 2019 was \$349.6 million.

### ***Related Party Expenses***

Related party expense was \$5.4 million and \$9.5 million for the year ended December 31, 2020 and 2019, respectively. The lower related party expense in 2020 is attributable to lower reimbursements made to Ex-Sigma and Ex-Sigma 2. In 2019 the Company paid approximately \$4.3 million in respect of legal expenses, premium payments on the \$55.8 million margin loan (obtained by Ex-Sigma 2 in 2017 to purchase additional common and preferred shares from the Company to help meet the minimum cash requirements needed to close the Novitex Business Combination) and other expenses related to secondary offerings that did not recur in 2020.

### ***Interest Expense***

Interest expense was \$173.9 million and \$163.4 million for the year ended December 31, 2020 and 2019, respectively. The increase in interest costs was partially attributable to the interest on securitization facilities and other interest accruals that was not incurred during the corresponding period in 2019.

### ***Debt Modification and Extinguishment Costs (Gain), net***

Loss on extinguishment of debt for the years ended December 31, 2020 and 2019 was \$9.6 million and \$1.4 million respectively. The Company recognized \$1.3 million and \$8.3 million in debt extinguishment costs during 2020, for the partial debt extinguishment resulting from amendment to the Term Loan in 2020 and the extinguishment of A/R Facility, respectively. The repricing and issuance of the 2019 incremental Term Loans resulted in the partial debt extinguishment, for which Exela recognized \$1.4 million in debt extinguishment costs during 2019.

### ***Sundry Expense (Income)***

The decrease of \$1.1 million over the prior year period was primarily attributable to foreign currency transaction gain / losses associated with exchange rate fluctuations.

### ***Other Expense (Income)***

Other expense (income), net was \$(34.8) million and \$14.4 million for the year ended December 31, 2020 and 2019, respectively. The change was primarily due to the \$35.5 million resulting from gain recognized on the sale of SourceHOV Tax, LLC and the \$8.7 million gain on the sale of the physical records storage and logistics business. Other expense (income) also includes an interest rate swap entered into in 2017. The interest rate swap was not designated as a hedge. As such, changes in the fair value of this derivative instrument are recorded directly in earnings. For the year ended December 31, 2020, the fair value of the interest swap liability decreased resulting in a gain of \$0.4 million.

### ***Income Tax Expense***

We had an income tax expense of \$13.6 million and \$7.6 million for the year ended December 31, 2020 and 2019, respectively. The change in the income tax expense was primarily attributable to our change in judgment related to the realizability of certain deferred tax assets. The change in the effective tax rate for the year ended December 31, 2020, resulted from permanent tax adjustments and valuation allowances, including valuation allowances against disallowed interest expense deferred tax assets that are not more-likely-than-not to be realized.

### ***Other Financial Information (Non-GAAP Financial Measures)***

We view EBITDA and Adjusted EBITDA as important indicators of performance. We define EBITDA as net income, plus taxes, interest expense, and depreciation and amortization. We define Adjusted EBITDA as EBITDA plus optimization and restructuring charges, including severance and retention expenses; transaction and integration costs; other non-cash charges, including non-cash compensation, (gain) or loss from sale or disposal of assets, and impairment charges; and management fees and expenses.

We present EBITDA and Adjusted EBITDA because we believe they provide useful information regarding the factors and trends affecting our business in addition to measures calculated under GAAP. Additionally, our credit agreement requires us to comply with certain EBITDA related metrics. Refer to—"Liquidity and Capital Resources—Indebtedness."

### ***Note Regarding Non-GAAP Financial Measures***

EBITDA and Adjusted EBITDA are not financial measures presented in accordance with GAAP. We believe that the presentation of these non-GAAP financial measures will provide useful information to investors in assessing our financial performance and results of operations as our board of directors and management use EBITDA and Adjusted

EBITDA to assess our financial performance, because it allows them to compare our operating performance on a consistent basis across periods by removing the effects of our capital structure (such as varying levels of interest expense), asset base (such as depreciation and amortization) and items outside the control of our management team. Net loss is the GAAP measure most directly comparable to EBITDA and Adjusted EBITDA. Our non-GAAP financial measures should not be considered as alternatives to the most directly comparable GAAP financial measure. Each of these non-GAAP financial measures has important limitations as analytical tools because they exclude some but not all items that affect the most directly comparable GAAP financial measures. These non-GAAP financial measures are not required to be uniformly applied, are not audited and should not be considered in isolation or as substitutes for results prepared in accordance with GAAP. Because EBITDA and Adjusted EBITDA may be defined differently by other companies in our industry, our definitions of these non-GAAP financial measures may not be comparable to similarly titled measures of other companies, thereby diminishing their utility.

The following tables present a reconciliation of EBITDA and Adjusted EBITDA to our net loss, the most directly comparable GAAP measure, for the years ended December 31, 2021, 2020, and 2019:

	Year Ended December 31,		
	2021	2020	2019
Net Loss	\$ (142,390)	\$ (178,530)	\$ (509,116)
Taxes	11,656	13,584	7,642
Interest expense	168,048	173,878	163,449
Depreciation and amortization	77,150	93,953	100,903
EBITDA	114,464	102,885	(237,122)
Optimization and restructuring expenses (1)	22,246	45,616	73,936
Transaction and integration costs (2)	15,872	16,620	5,703
Non-cash equity compensation (3)	3,940	2,846	7,827
Other charges including non-cash (4)	32,484	26,154	21,382
Loss/(Gain) on sale of assets (5)	(2,779)	114	301
Loss/(Gain) on business disposals (6)	1,296	(44,595)	—
Debt modification and extinguishment costs (gain), net	(16,689)	9,589	1,404
Loss/(Gain) on derivative instruments (7)	(893)	375	4,337
Contract costs (8)	4,268	4,317	17,046
Dissenting shareholders expense (relating to the Appraisal Action)	—	—	10,431
Litigation reserve	(925)	9,624	—
Impairment of goodwill and other intangible assets	—	—	349,557
Adjusted EBITDA	<u>173,284</u>	<u>173,545</u>	<u>254,802</u>

- (1) Adjustment represents net salary and benefits associated with positions, current vendor expenses and existing lease contracts that are part of the on-going savings and productivity improvement initiatives in process transformation, customer transformation and post-merger or acquisition integration.
- (2) Represents costs incurred related to transactions for completed or contemplated transactions during the period.
- (3) Represents the non-cash charges related to restricted stock units and options that vested during the year at Ex-Sigma in the case of the SourceHOV 2013 Long Term Incentive Plan assumed by it in connection with the Novitex Business Combination and the Company under the 2018 Stock Incentive Plan.
- (4) Represents fair value adjustments to deferred revenue and deferred rent accounts established as part of purchase accounting and other non-cash charges. Other charges include severance, retention bonus, facility consolidation and other transition costs.
- (5) Represents a loss/(gain) recognized on the disposal of property, plant, and equipment and other assets.
- (6) Represents a loss/(gain) recognized on the disposal of noncore-business assets.

- (7) Represents the impact of changes in the fair value of an interest rate swap entered into during the fourth quarter of 2017.
- (8) Represents costs incurred on new projects, contract start-up costs and project ramp costs.

## **Liquidity and Capital Resources**

### **Overview**

At December 31, 2021, cash and cash equivalents totaled \$48.1 million and we had no unutilized availability under our senior secured revolving credit facility.

We currently expect to spend approximately \$15.0 to \$20.0 million on total capital expenditures over the next twelve months. We will continue to evaluate additional capital expenditure needs that may arise due to changes in the business model due to COVID-19 and remote working.

As of December 31, 2021 and in comparison to December 31, 2020, the Company has reduced debt by \$338.5 million under previously announced initiatives. With an objective to increase free cash flows and in order to maintain sufficient liquidity to support profitable growth, the Company is pursuing further reduction in debt and repricing of existing debt. The Company will continue to pursue the sale of certain non-core businesses that are not central to the Company's long-term strategic vision and invest in acquisition of businesses that enhance the value proposition. There can be no assurances that any of these initiatives will be consummated or will achieve its desired result.

On March 26, 2020, the Delaware Court of Chancery entered a judgment against one of our subsidiaries in the amount of \$57.7 million inclusive of costs and interest arising out of the petition for appraisal pursuant to 8 Del. C. § 262 in the Delaware Court of Chancery, captioned Manichaeian Capital, LLC, et al. v. SourceHOV Holdings, Inc., C.A. No. 2017 0673 JRS (pursuant to which former stockholders of SourceHOV sought, among other things, a determination of the fair value of their 10,304 SourceHOV shares at the time of the Novitex Business Combination) (the "Appraisal Action"). On December 31, 2021, we agreed to settle the Appraisal Action along with a separate case brought by the same plaintiffs for \$63.4 million. Accordingly as of December 31, 2021, the Company accrued a liability of \$63.4 million for these matters, all of which is expected to be paid during the first half of 2022 (\$40 million having already been paid as of March 16, 2022).

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted in response to the COVID-19 pandemic. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. The Company has implemented favorable provisions of the CARES Act, including the refundable payroll tax credits and the deferment of employer social security payments. At the end of 2021, the Company paid a portion of the deferred employer social security due as per IRS guidance. The remaining balance of deferred employer social security taxes will be paid by the end of fiscal 2022. The Company has utilized recently enacted COVID-19 relief measures in various European jurisdictions, including permitted deferrals of certain payroll, social security and value added taxes. At the end of 2021, the Company paid a portion of these deferred payroll taxes, social security and value added taxes. The remaining balance of deferred payroll taxes, social security and value added taxes will be paid by the end of fiscal 2022 as per deferment timeline.

On December 17, 2020, certain subsidiaries of the Company entered into a \$145.0 million securitization facility with a five year term (the "Securitization Facility"). On December 17, 2020 the Company made the initial borrowing of approximately \$92.0 million under the Securitization Facility and used a portion of the proceeds to repay previous securitization facility, which terminated on such date. The Company used the remaining proceeds for general corporate purposes.

On March 15, 2021, the Company, entered into a securities purchase agreement with certain accredited institutional investors pursuant to which the Company issued and sold to ten accredited institutional investors in a private

placement an aggregate of 9,731,819 unregistered shares of the Company’s Common Stock at a price of \$2.75 per share and an equal number of warrants, generating gross proceeds to the Company of \$26.8 million. Cantor Fitzgerald acted as underwriter in connection with such sale of unregistered securities and received a placement fee of 5.5% of gross proceeds in connection with such service. In selling the shares without registration, the Company relied on exemptions from registration available under Section 4(a)(2) of the Securities Act of 1933 and Rule 506 promulgated thereunder. Each private placement warrant entitles the holder to purchase one share of Common Stock, will be exercisable at an exercise price of \$4.00 per share beginning on September 19, 2021 and will expire on September 19, 2026.

On May 27, 2021, the Company entered into an At Market Issuance Sales Agreement (“First ATM Agreement”) with B. Riley Securities, Inc. (“B. Riley”) and Cantor Fitzgerald & Co. (“Cantor”), as distribution agents under which the Company may offer and sell shares of the Company’s Common Stock from time to time through the Distribution Agents, acting as sales agent or principal. On September 30, 2021, the Company entered into a second At Market Issuance Sales Agreement with B. Riley, BNP Paribas Securities Corp., Cantor, Mizuho Securities USA LLC and Needham & Company, LLC, as distribution agents (together with the First ATM Agreement, the “ATM Agreement”).

Sales of the shares of Common Stock under the ATM Agreement, will be in “at the market offerings” as defined in Rule 415 under the Securities Act, including, without limitation, sales made directly on or through the Nasdaq or on any other existing trading market for the Common Stock, as applicable, or to or through a market maker or any other method permitted by law, including, without limitation, negotiated transactions and block trades. Shares of Common Stock sold under the ATM Agreement are offered pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-255707), filed with the SEC on May 3, 2021, and declared effective on May 12, 2021 (the “2021 Registration Statement”), and the prospectus dated May 12, 2021 included in the 2021 Registration Statement and the related prospectus supplements for sales of shares of Common Stock as follows:

Supplement	Period	Number of Shares Sold	Weighted Average Price Per Share	Gross Proceeds	Net Proceeds
Prospectus supplement dated May 27, 2021 with an aggregate offering price of up to \$100 million (“Common ATM Program–1”)	May 28, 2021 and through July 1, 2021	49,423,706	\$2.008	\$99.3 million	\$95.7 million
Prospectus supplement dated June 30, 2021 with an aggregate offering price of up to \$150 million (“Common ATM Program–2”)	June 30, 2021 and through September 2, 2021	57,580,463	\$2.603	\$149.9 million	\$144.4 million
Prospectus supplement dated September 30, 2021 with an aggregate offering price of up to \$250.0 million (“Common ATM Program–3”)	October 6, 2021 through December 31, 2021	98,594,447	\$1.327	\$130.8 million	\$126.4 million

### Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Year Ended December 31,		
	2021	2020	2019
Net cash used in operating activities	\$ (111,534)	\$ (29,781)	\$ (63,851)
Net cash provided by (used in) investing activities	(9,261)	21,438	(25,182)
Net cash provided by financing activities	98,651	63,362	59,139
Subtotal	(22,144)	55,019	(29,894)
Effect of exchange rates on cash	(105)	1,191	139
Net increase (decrease) in cash and cash equivalents	<u>(22,249)</u>	<u>56,210</u>	<u>(29,755)</u>



## **Analysis of Cash Flow Changes between the years ended December 31, 2021, December 31, 2020, and December 31, 2019**

Operating Activities— Net cash used in operating activities was \$111.5 million for the year ended December 31, 2021, compared to cash used in operating activities of \$29.8 million for the year ended December 31, 2020. The increase of \$81.7 million in cash used in operating activities for the year ended December 31, 2021 was due to lower cash flow from accounts receivable and lower cash flows from accounts payable and accrued liabilities.

Net cash used in operating activities was \$29.8 million for the year ended December 31, 2020, compared to cash used in operating activities of \$63.8 million for the year ended December 31, 2019. The increase of \$34.0 million in cash flows from operating activities for the year ended December 31, 2020 was due to lower Gross profits in the corresponding period offset by higher cash flow from working capital primarily driven by \$46 million improvement in our accounts receivables. “Gross profit” is defined as revenue less cost of revenue (exclusive of depreciation and amortization). This decrease in cash flow was significantly offset by higher cash flows from accounts receivables.

Investing Activities— Net cash used in investing activities was \$9.2 million for the year ended December 31, 2021, compared to cash provided by investing activities of \$21.4 million for the year ended December 31, 2020. The increase of \$30.6 million in cash used in investing activities for the year ended December 31, 2021 was primarily due to \$50.1 million total cash proceeds received from asset sales in 2020, higher additions to Property, plant and equipment and development of internal software, offset by \$12.5 million used in partial settlement of the liabilities related to the healthcare acquisition announced early in the first quarter of 2019.

Net cash provided by investing activities was \$21.4 million for the year ended December 31, 2020, compared to cash used in investing activities of \$25.2 million for the year ended December 31, 2019. The increase of \$46.6 million in cash used in investing activities for the year ended December 31, 2020 was primarily due to \$50.1 million total cash proceeds received from asset sales, lower additions to Property, plant and equipment and development of internal software offset by partial settlement of the liabilities related to the healthcare acquisition announced early in the first quarter of 2019.

Financing Activities— Net cash provided by financing activities was \$98.7 million for the year ended December 31, 2021, compared to cash provided by financing activities of \$63.4 million for the year ended December 31, 2020. The increase of \$35.3 million in cash provided by financing activities for the year ended December 31, 2021 was primarily result of \$391.6 million of net proceeds from equity offerings offset by debt repurchases and repayments of our term loans and senior notes of \$380.5 million.

Net cash provided by financing activities was \$63.4 million for the year ended December 31, 2020, compared to cash provided by financing activities of \$59.1 million for the year ended December 31, 2019. The increase of \$4.3 million in cash provided by financing activities for the year ended December 31, 2020 was primarily due to the proceeds from securitization facilities and revolving credit facility offset by principal payments made on debt.

### **Indebtedness**

In connection with the Novitex Business Combination, we acquired debt facilities and issued notes totaling \$1.4 billion. Proceeds from the indebtedness were used to pay off credit facilities existing immediately before the Novitex Business Combination.

#### *Senior Credit Facilities*

On July 12, 2017, subsidiaries of the Company entered into a First Lien Credit Agreement with Royal Bank of Canada, Credit Suisse AG, Cayman Islands Branch, Natixis, New York Branch and KKR Corporate Lending LLC (the “Credit Agreement”) providing Exela Intermediate LLC, a wholly owned subsidiary of the Company, upon the terms and subject to the conditions set forth in the Credit Agreement, (i) a \$350.0 million senior secured term loan maturing July 12, 2023 with an original issue discount of \$7.0 million, and (ii) a \$100.0 million senior secured revolving facility maturing July 12, 2022 (the “Revolving Credit Facility”).

On July 13, 2018, we were able to refinance the \$343.4 million of term loans then outstanding under the Credit Agreement (the “Repricing Term Loans”) and borrowed an additional \$30.0 million pursuant to incremental term loans (the “2018 Incremental Term Loans”). The proceeds of the 2018 Incremental Term Loans were used by the Company for general corporate purposes and to pay related fees and expenses.

On April 16, 2019, subsidiaries of the Company borrowed a further \$30.0 million pursuant to incremental term loans (the “2019 Incremental Term Loans”, and, together with the 2018 Incremental Terms Loans and Repricing Term Loans, the “Term Loans”). The proceeds of the 2019 Incremental Term Loans were used to replace cash spent for acquisitions, pay related fees, expenses and related borrowings for general corporate purposes.

The Term Loans bear interest at a rate per annum of, at the borrower’s option, either (a) a LIBOR rate determined by reference to the costs of funds for Eurodollar deposits for the interest period relevant to such borrowing, adjusted for certain additional costs, subject to a 1.0% floor, or (b) a base rate determined by reference to the highest of (i) the federal funds rate plus 0.5%, (ii) the prime rate and (iii) the one-month adjusted LIBOR plus 1.0%, in each case plus an applicable margin of 6.5% for LIBOR loans and 5.5% for base rate loans. The Term Loans will mature on July 12, 2023. As of December 31, 2021, the interest rate applicable for the first lien senior secured term loan was 7.5%.

The Term Loans are jointly and severally, irrevocably and unconditionally guaranteed by the nearly all of Company’s U.S. subsidiaries, as a primary obligors and not merely as a sureties.

The borrower may voluntarily repay the Term Loans at any time, without prepayment premium or penalty, subject to customary “breakage” costs with respect to LIBOR rate loans. Other than as described above, the terms, conditions and covenants applicable to the Incremental Term Loans are consistent with the terms, conditions and covenants that were applicable to the Repricing Term Loans under the Credit Agreement.

On May 18, 2020, we amended the Credit Agreement to, among other things, extend the time for delivery of its audited financial statements for the year ended December 31, 2019 and its financial statements for the quarter ended March 31, 2020. Pursuant to the amendment, we also agreed to amend the Credit Agreement to, among other things: restrict the borrower and its subsidiaries’ ability to designate or invest in unrestricted subsidiaries; incur certain debt; create certain liens; make certain investments; pay certain dividends or other distributions on account of its equity interests; make certain asset sales or other dispositions (or utilize the proceeds of certain asset sales to reinvest in the business); or enter into certain affiliate transactions pursuant to the negative covenants under the Credit Agreement. In addition, pursuant to the amendment, the borrower under the Credit Agreement was required to maintain minimum Liquidity (as defined in the amendment) of \$35.0 million.

On December 9, 2021, in a separate transaction referred to as “Private Exchange” (outside of the Public Exchange as discussed below), we agreed with three (3) of its term loan lenders for partial repayment and partial exchange of their outstanding balance of senior secured term loan under Credit Agreement for the new 2026 Notes. The Company agreed with these participating lenders to repay outstanding balance of \$212.1 million of senior secured term loan under Credit Agreement payable to them in cash consideration of \$84.3 million and in new 2026 Notes of \$127.8 million. In connection with the Private Exchange transaction, the exchanging lenders provided consents to amend the Credit Agreement to (i) eliminate all affirmative covenants, (ii) eliminate all negative covenants and (iii) eliminate certain events of default (other than events of default relating to payment obligations).

As a result of the Private Exchange, repurchases (as discussed below) and periodic principal repayments, \$93.2 million aggregate principal amount of the senior secured term loan remains outstanding as of December 31, 2021.

#### *Revolving Credit Facility; Letters of Credit*

As of December 31, 2021 and December 31, 2020, our \$100 million Revolving Credit Facility was fully drawn taking into account letters of credit issued thereunder. As of December 31, 2021 and December 31, 2020, we had outstanding irrevocable letters of credit totaling approximately \$0.5 million and \$19.5 million, respectively, under the Revolving Credit Facility.

### *Senior Secured 2023 Notes*

Upon the closing of the Novitex Business Combination on July 12, 2017, subsidiaries of the Company issued \$1.0 billion in aggregate principal amount of 10.0% First Priority Senior Secured Notes due 2023 (the “2023 Notes”). The 2023 Notes bear interest at a rate of 10.0% per year. We pay interest on the 2023 Notes on January 15 and July 15 of each year, commencing on January 15, 2018. The 2023 Notes are jointly and severally, irrevocably and unconditionally guaranteed by the nearly all of Company’s U.S. subsidiaries, on a senior basis, as a primary obligors and not merely as a sureties. The 2023 Notes will mature on July 15, 2023.

On October 27, 2021, we launched an offer to exchange (the “Public Exchange”) up to \$225.0 million in cash and new 11.500% First-Priority Senior Secured Notes due 2026 (the “2026 Notes”) issued by subsidiaries of the Company’s for the outstanding 2023 Notes. The Public Exchange was for \$900 in cash per \$1,000 principal amount of 2023 Notes tendered subject to proration. The maximum amount of cash to be paid was \$225.0 million and the offer was not subject to any minimum participation condition. In case of oversubscription to the cash offer, tendered 2023 Notes would be accepted for cash on a pro rata basis (as a single class). The balance of any tendered 2023 Notes not accepted for cash would be exchanged into 2026 Notes on the basis of \$1,000 principal amount of new 2026 Notes for each \$1,000 principal amount of outstanding 2023 Notes tendered.

As of the expiration time of the Public Exchange, \$912,660,000 aggregate principal amount, or approximately 91.3%, of the 2023 Notes were validly tendered pursuant to the Public Exchange. On December 9, 2021, upon the settlement of the Public Exchange, \$662,660,000 aggregate principal amount of the 2026 Notes were issued and an aggregate \$225.0 million in cash (plus accrued but unpaid interest) was paid to participating holders in respect of the validly tendered 2023 Notes.

As a result of the Public Exchange and repurchases (as discussed below), \$22.8 million aggregate principal amount of the 2023 Notes remains outstanding as of December 31, 2021.

In conjunction with the Public Exchange, we also solicited consents to amend certain provisions in the indenture governing the 2023 Notes (“Notes Amendments”). On December 1, 2021, on receipt of the requisite consents to the Notes Amendments, the Company, and Wilmington Trust, National Association, as trustee (the “2023 Notes Trustee”), entered into a third supplemental indenture (the “Third Supplemental Indenture”) to the indenture, dated as of July 12, 2017 (as amended and supplemented by (i) the first supplemental indenture, dated as of July 12, 2017 and (ii) the second supplemental indenture, dated as of May 20, 2020, the “2023 Notes Indenture”) governing the outstanding 2023 Notes. The Third Supplemental Indenture amends the 2023 Notes Indenture and the 2023 Notes to eliminate substantially all of the restrictive covenants, eliminate certain events of default, modify covenants regarding mergers and consolidations and modify or eliminate certain other provisions, including certain provisions relating to future guarantors and defeasance, contained in the 2023 Notes Indenture and the 2023 Notes. In addition, all of the collateral securing the 2023 Notes was released pursuant to the Third Supplemental Indenture.

### *Senior Secured 2026 Notes*

On December 9, 2021, subsidiaries of the Company issued \$790.5 million in aggregate principal amount of 2026 Notes under the Public Exchange and Private Exchange transactions discussed above. Apart from this, during December 2021 the Company issued and sold \$4.5 million in aggregate principal amount of 2026 Notes generating net proceeds of \$3.6 million. The 2026 Notes are guaranteed by certain subsidiaries of the Company. The 2026 Notes bear interest at a rate of 11.5% per year. We will pay interest on the 2026 Notes on January 15 and July 15 of each year, commencing on July 15, 2022. The 2026 Notes will mature on July 12, 2026. As of December 31, 2021, we were in compliance with all covenants required under the 2026 Notes.

On or after December 1, 2022, we may redeem the 2026 Notes in whole or in part from time to time, at a redemption price of 100%, plus accrued and unpaid interest, if any, to, but excluding, the applicable redemption date. In addition, prior to December 1, 2022, we may redeem the 2026 Notes in whole or in part from time to time, at a redemption price equal to 100% of the principal amount of the 2026 Notes redeemed, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding, the applicable redemption date. “Applicable Premium”

means, with respect to any 2026 Note on any applicable redemption date, as determined by us, the greater of: (1) 1% of the then outstanding principal amount of the 2026 Note; and (2) the excess of: (a) the present value at such redemption date of (i) the redemption price of the 2026 Note, at December 1, 2022 plus (ii) all required interest payments due on the 2026 Note through December 1, 2022 (excluding accrued but unpaid interest), computed using a discount rate equal to the treasury rate as of such redemption date plus 50 basis points; over (b) the then outstanding principal amount of the 2026 Note.

#### *Repurchases*

In July 2021 we commenced a debt buyback program to repurchase 2023 Notes and senior secured term loans under the Credit Agreement, which is ongoing. During the year ended December 31, 2021, we repurchased \$64.5 million of the outstanding principal amount of our 2023 Notes for a net cash consideration of \$48.4 million. The gain on early extinguishment of debt for the 2023 Notes during the year ended December 31, 2021 totaled \$15.3 million and is inclusive of \$0.6 million and \$0.2 million write off of original issue discount and debt issuance costs, respectively. During the year ended December 31, 2021, we also repurchased \$40.0 million of the outstanding principal amount of our senior secured term loans under the Credit Agreement for a net cash consideration of \$22.8 million. The gain on early extinguishment of debt for the senior secured term loan during the year ended December 31, 2021 totaled \$15.3 million and is inclusive of \$0.4 million and \$1.5 million write off of original issue discount and debt issuance costs, respectively.

#### *BRCC Facility*

On November 17, 2021, GP2 XCV, LLC, a subsidiary of the Company (“GP2 XCV”), entered into a borrowing facility with B. Riley Commercial Capital, LLC pursuant to which the Company was able to borrow an original principal amount of \$75.0 million, which was later increased to \$115.0 million as of December 7, 2021 (as the same may be amended from time to time, the “BRCC Facility”). The BRCC Facility is secured by a lien on all the assets of GP2 XCV and by a pledge of the equity of GP2 XCV. GP2 XCV is a bankruptcy-remote entity and as such its assets are not available to other creditors of the Company or any of its subsidiaries other than GP2 XCV. The facility will mature on March 31, 2023. Interest under the BRCC Facility accrues at a rate of 11.5% per annum and is payable quarterly on the last business day of each March, June, September and December. The purpose of this facility was to fund certain repurchases of senior secured term loan under the Credit Agreement and to provide funding of Public Exchange transaction and Private Exchange transaction as discussed above. As of December 31, 2021, there were borrowings of \$115.0 million outstanding under the BRCC Facility.

#### *Securitization Facilities*

On December 17, 2020, certain subsidiaries of Company closed on Securitization Facility with a five year term. The Securitization Facility provided for an initial funding of approximately \$92.0 million supported by the receivables portion of the borrowing base and, subject to contribution, a further funding of approximately \$53.0 million supported by inventory and intellectual property. On December 17, 2020 we made the initial borrowing of approximately \$92.0 million under the Securitization Facility and used a portion of the proceeds to repay a previous securitization facility and used the remaining proceeds for general corporate purposes.

The initial documentation for the Securitization Facility includes (i) a Loan and Security Agreement (the “Securitization Loan Agreement”), dated as of December 10, 2020, by and among Exela Receivables 3, LLC (the “Securitization Borrower”), a wholly-owned indirect subsidiary of the Company, the lenders (each, a “Securitization Lender” and collectively the “Securitization Lenders”), Alter Domus (US), LLC, as administrative agent (the “Securitization Administrative Agent”) and the Company, as initial servicer, pursuant to which the Securitization Lenders will make loans to the Securitization Borrower to be used to purchase receivables and related assets from the Securitization Parent SPE (as defined below), (ii) a First Tier Receivables Purchase and Sale Agreement (the, dated as of December 17, 2020, by and among Exela Receivables 3 Holdco, LLC (the “Securitization Parent SPE”), a wholly-owned indirect subsidiary of the Company, and certain other indirect, wholly-owned subsidiaries of the Company listed therein (collectively, the “Securitization Originators”), and the Company, as initial servicer, pursuant to which each Securitization Originator has sold or contributed and will sell or contribute to the Securitization Parent SPE certain receivables and related assets in consideration for a combination of cash and equity in the Securitization Parent SPE, (iii)

a Second Tier Receivables Purchase and Sale Agreement, dated as of December 17, 2020, by and among, the Securitization Borrower, the Securitization Parent SPE and the Company, as initial servicer, pursuant to which Securitization Parent SPE has sold or contributed and will sell or contribute to the Securitization Borrower certain receivables and related assets in consideration for a combination of cash and equity in the Securitization Borrower, (iv) the Sub-Servicing Agreement, dated as of December 17, 2020, by and among the Company and each Securitization Originator, (v) the Pledge and Guaranty, dated as of the December 10, 2020, between the Securitization Parent SPE and the Administrative Agent, and (vi) the Performance Guaranty, dated as of December 17, 2020, between the Company, as performance guarantor, and the Securitization Administrative Agent (and together with all other certificates, instruments, UCC financing statements, reports, notices, agreements and documents executed or delivered in connection with the Securitization Loan Agreement, the “Securitization Agreements”). On April 11, 2021, the Company amended the Securitization Loan Agreement and agreed to, among other things, extend the option to contribute inventory and intellectual property to the borrowing base from April 10, 2021 to September 30, 2021 (which did not occur).

The Securitization Borrower, the Company, the Securitization Parent SPE and the Securitization Originators provide customary representations and covenants under the Securitization Agreements. The Securitization Loan Agreement provides for certain events of default upon the occurrence of which the Securitization Administrative Agent may declare the facility’s termination date to have occurred and declare the outstanding Securitization Loan and all other obligations of the Securitization Borrower to be immediately due and payable, however the Securitization Facility does not include an ongoing liquidity covenant like the A/R Facility and aligns reporting obligations with the Company’s other material indebtedness agreements.

The Securitization Borrower and Securitization Parent SPE were formed in December 2020, and are consolidated into the Company’s financial statements. The Securitization Borrower and Securitization Parent SPE are bankruptcy remote entities and as such their assets are not available to creditors of the Company or any of its subsidiaries. Each loan under the Securitization Facility bears interest on the unpaid principal amount as follows: (i) if a Base Rate Loan, at a rate per annum equal to (x) the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the Adjusted LIBOR Rate (as defined in the Securitization Loan Agreement) plus 1.00%, plus (y) 8.75%; or (ii) if a LIBOR Rate Loan, at the Adjusted LIBOR Rate plus 9.75%. As of December 31, 2021, there were borrowings of \$91.9 million outstanding under the Securitization Facility.

### Selected Financial Information

The following selected consolidated financial data should be read in conjunction with Item 8, "Financial Statements and Supplementary Data" of this Annual Report in order to fully understand factors that may affect the comparability of the financial data. The following selected Consolidated Balance Sheet data as of December 31, 2021 and 2020 and selected Consolidated Statements of Operations for the years ended December 31, 2021, 2020 and 2019 are derived from our audited financial statements included in Item 8 of this Annual Report. The following selected consolidated financial data is provided here as historical trend information. The historical results do not necessarily indicate results expected for any future period.

(in thousands, except share and per share data)	Year Ended December 31,				
	2021	2020	2019	2018	2017
<b>Statements of Operations Information:</b>					
Revenue	\$ 1,166,606	\$ 1,292,562	\$ 1,562,337	\$ 1,586,222	\$ 1,145,891
Cost of revenue (exclusive of depreciation and amortization)	889,095	1,023,544	1,224,735	1,213,403	827,544
Selling, general and administrative expenses (exclusive of depreciation and amortization)	169,781	186,104	198,864	184,908	220,955
Depreciation and amortization	77,150	93,953	100,903	138,077	98,890
Impairment of goodwill and other intangible assets	—	—	349,557	48,127	69,437
Related party expense	9,191	5,381	9,501	12,403	33,431
<b>Operating (loss) income</b>	<b>21,389</b>	<b>(16,420)</b>	<b>(321,223)</b>	<b>(10,696)</b>	<b>(104,366)</b>
<b>Other expense (income), net:</b>					
Interest expense, net	168,048	173,878	163,449	155,991	129,676
Debt modification and extinguishment costs (gain)	(16,689)	9,589	1,404	1,067	35,512

Sundry expense (income), net	363	(153)	969	(3,271)	2,295
Other expense (income), net	401	(34,788)	14,429	(3,030)	(1,297)
<b>Net loss before income taxes</b>	<b>(130,734)</b>	<b>(164,946)</b>	<b>(501,474)</b>	<b>(161,453)</b>	<b>(270,552)</b>
Income tax (expense) benefit	(11,656)	(13,584)	(7,642)	(8,353)	61,068
<b>Net loss</b>	<b>(142,390)</b>	<b>(178,530)</b>	<b>(509,116)</b>	<b>(169,806)</b>	<b>(209,484)</b>
Dividend equivalent on Series A Preferred Stock related to beneficial conversion feature	—	—	—	—	(16,375)
Cumulative dividends for Series A Preferred Stock	(1,576)	(1,309)	(3,309)	(3,655)	(2,489)
<b>Net loss attributable to common stockholders</b>	<b>(143,966)</b>	<b>(179,839)</b>	<b>(512,425)</b>	<b>(173,461)</b>	<b>(228,348)</b>
<b>Loss per share:</b>					
Basic	(1.22)	(3.66)	(10.55)	(3.52)	(6.53)
Diluted	(1.22)	(3.66)	(10.55)	(3.52)	(6.53)
<b>Weighted average number of shares outstanding (1):</b>					
Basic	118,001,162	49,144,429	48,572,979	49,257,696	34,971,461
Diluted	118,001,162	49,144,429	48,572,979	49,257,696	34,971,461

(1) Excluding in each case the 1,523,578 shares returned to the Company in the first quarter of 2020 in connection with the Appraisal Action, which were treated as outstanding until they were returned to the Company.

(in thousands)	As of December 31,				
	2021	2020	2019	2018	2017
<b>Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 20,775	\$ 68,221	\$ 6,198	\$ 36,206	\$ 39,000
Accounts receivable, net of allowance for doubtful accounts	184,102	206,868	261,400	270,812	229,704
Working capital	(220,002)	(131,446)	(147,056)	(123,502)	(68,634)
Total Assets	1,037,023	1,157,779	1,258,324	1,627,823	1,717,232
Long-term debt, net of current maturities	1,104,399	1,498,004	1,398,385	1,306,423	1,276,094
Total liabilities	1,703,795	2,084,311	2,001,365	1,869,082	1,769,029
Total stockholders' deficit	(666,772)	(926,532)	(743,041)	(241,259)	(51,797)

### Potential Future Transactions

We may, from time to time explore and evaluate possible strategic transactions, which may include joint ventures, as well as business combinations or the acquisition or disposition of assets. In order to pursue certain of these opportunities, additional funds will likely be required. Subject to applicable contractual restrictions, to obtain such financing, we may seek to use cash on hand, borrowings under our revolving credit facilities, or we may seek to raise additional debt or equity financing through private placements or through registered “at-the-market” or underwritten offerings. There can be no assurance that we will enter into additional strategic transactions or alliances, nor do we know if we will be able to obtain the necessary financing for transactions that require additional funds on favorable terms, if at all. In addition, pursuant to the Registration Rights Agreement that we entered into in connection with the closing of the Novitex Business Combination, certain of our stockholders have the right to demand underwritten offerings of our Common Stock. We may from time to time in the future explore, with certain of those stockholders the possibility of an underwritten public offering of our Common Stock held by those stockholders. There can be no assurance as to whether or when an offering may be commenced or completed, or as to the actual size or terms of the offering.

### Critical Accounting Policies and Estimates

The preparation of financial statements requires the use of judgments and estimates. Our critical accounting policies are described below to provide a better understanding of how we develop our assumptions and judgments about future events and related estimations and how they can impact our financial statements. A critical accounting estimate is one that requires subjective or complex estimates and assessments, and is fundamental to our results of operations. We base our estimates on historical experience and on various other assumptions we believe to be reasonable according to the current facts and circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We believe the current assumptions, judgments and estimates used to determine amounts reflected in our consolidated financial statements are appropriate; however,



actual results may differ under different conditions. This discussion and analysis should be read in conjunction with our consolidated financial statements and related notes included in this document.

*Goodwill and other intangible assets:* Goodwill and other intangible assets are initially recorded at their fair values. Goodwill represents the excess of the purchase price of acquisitions over the fair value of the net assets acquired. Our goodwill at December 31, 2021 and 2020 was \$358.3 million and \$359.8 million, respectively. Goodwill and other intangible assets not subject to amortization are tested for impairment annually or more frequently if events or changes in circumstances indicate that the asset might be impaired. Intangible assets with finite useful lives are amortized either on a straight-line basis over the asset's estimated useful life or on a basis that reflects the pattern in which the economic benefits of the intangible assets are realized.

*Impairment of goodwill, long-lived and other intangible assets:* Long-lived assets, such as property and equipment and finite-lived intangible assets are evaluated for impairment whenever events or changes in circumstances indicate that their carrying value may not be recoverable. Recoverability is measured by a comparison of their carrying amount to the estimated undiscounted cash flows to be generated by those assets. If the undiscounted cash flows are less than the carrying amount, we record impairment losses for the excess of the carrying value over the estimated fair value. Fair value is determined, in part, by the estimated cash flows to be generated by those assets. Our cash flow estimates are based upon, among other things, historical results adjusted to reflect our best estimate of future market rates, and operating performance. Development of future cash flows also requires us to make assumptions and to apply judgment, including timing of future expected cash flows, using the appropriate discount rates, and determining salvage values. The estimate of fair value represents our best estimates of these factors, and is subject to variability. Assets are generally grouped at the lowest level of identifiable cash flows, which is the reporting unit level for us. Changes to our key assumptions related to future performance and other economic factors could adversely affect our impairment valuation.

We conduct our annual goodwill impairment tests on October 1st of each year, or more frequently if indicators of impairment exist. When performing the annual impairment test, we have the option of performing a qualitative or quantitative assessment to determine if an impairment has occurred. If a qualitative assessment indicates that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, we would be required to perform a quantitative impairment test for goodwill. A quantitative test requires comparison of fair value of the reporting unit to its carrying value, including goodwill. We use a combination of the Guideline Public Company Method of the Market Approach and the Discounted Cash Flow Method of the Income Approach to determine the reporting unit fair value. For the Guideline Public Company Method, our annual impairment test utilizes valuation multiples of publicly traded peer companies. For the Discounted Cash Flow Method, our annual impairment test utilizes discounted cash flow projections using market participant weighted average cost of capital calculation. If the fair value of goodwill at the reporting unit level is less than its carrying value, an impairment loss is recorded for the amount by which a reporting unit's carrying amount exceeds its fair value, limited to the total amount of goodwill allocated to that reporting unit.

We conducted our annual goodwill impairment tests for year 2021 and 2020 on October 1, 2021 and 2020, respectively, and concluded that there was no impairment in our goodwill and other intangible assets during these years.

Application of the goodwill impairment test requires judgment, including the identification of reporting units, allocation of assets and liabilities to reporting units, and determination of fair value. The determination of reporting unit fair value is sensitive to the amount of Revenue and EBITDA generated by us, as well as the Revenue and EBITDA market multiples used in the calculation. Additionally, the fair value is sensitive to changes in the valuation assumptions such as expected income tax rate, risk-free rate, asset beta, and various risk premiums. Unanticipated changes, including immaterial revisions, to these assumptions could result in a provision for impairment in a future period. Given the nature of these evaluations and their application to specific assets and time frames, it is not possible to reasonably quantify the impact of changes in these assumptions.

In the process of reconciling the fair values of the Company's reporting units to its overall market capitalization, the Company used a combination of both quantitative and qualitative considerations, arriving at the implied control premium of (9.1)%. The implied control premium was computed using the Company's closing stock price as of October 1, 2021.



**Revenue:** We account for revenue in accordance with ASC 606. 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. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring goods or providing services. The contract transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. All of our material sources of revenue are derived from contracts with customers, primarily relating to the provision of business and transaction processing services within each of our segments. We do not have any significant extended payment terms, as payment is received shortly after goods are delivered or services are provided. Refer to Note 2—Basis of Presentation and Summary of Significant Accounting Policies for additional information regarding our revenue recognition policy.

**Income Taxes:** We account for income taxes by using the asset and liability method. We account for income taxes regarding uncertain tax positions and recognize interest and penalties related to uncertain tax positions in income tax benefit/(expense) in the consolidated statements of operations.

The Tax Cuts and Jobs Act (“TCJA”) was signed by the President of the United States and enacted into law on December 22, 2017. The TCJA significantly changes U.S. tax law by reducing the U.S. corporate income tax rate to 21% from 35%, adopting a territorial tax regime, creating new taxes on certain foreign sourced earnings and imposing a one-time transition tax on the undistributed earnings of certain non-U.S. subsidiaries.

Deferred income taxes are recognized on the tax consequences of temporary differences by applying enacted statutory tax rates applicable in future years to differences between the financial statement carrying amounts and the tax bases of existing assets and liabilities, as determined under tax laws and rates. A valuation allowance is provided when it is more likely than not that all or some portion of the deferred tax assets will not be realized. Due to numerous ownership changes, we are subject to limitations on existing net operating losses under Section 382 of the Internal Revenue Code. In the event we determine that we would be able to realize deferred tax assets that have valuation allowances established, an adjustment to the net deferred tax assets would be recognized as a component of income tax expense through continuing operations.

We engage in transactions (such as acquisitions) in which the tax consequences may be subject to uncertainty and examination by the varying taxing authorities. Significant judgment is required by us in assessing and estimating the tax consequences of these transactions. While our tax returns are prepared and based on our interpretation of tax laws and regulations, in the normal course of business the tax returns are subject to examination by the various taxing authorities. Such examinations may result in future assessments of additional tax, interest and penalties. For purposes of our income tax provision, a tax benefit is not recognized if the tax position is not more likely than not to be sustained based solely on its technical merits. Considerable judgment is involved in determining which tax positions are more likely than not to be sustained.

**Business Combinations:** We allocate the total cost of an acquisition to the underlying assets based on their respective estimated fair values. Determination of fair values involves significant estimates and assumptions about highly subjective variables, including future cash flows, discount rates, and asset lives. The estimates of the fair values of assets and liabilities acquired are based upon assumptions believed to be reasonable and, when appropriate, include assistance from independent third-party valuation firms.

Because we are primarily a services business, our acquisitions typically result in significant amounts of goodwill and other intangible assets. Fair value estimates and calculations for these acquisitions will affect the amount of amortization expense, or possible impairment related charges recognized in future periods. We base our fair value estimates on assumptions we believe are reasonable, but recognize that the assumptions are inherently uncertain.

#### **Recently Adopted and Recently Issued Accounting Pronouncements**

See Note 2 to the consolidated financial statements.

## **Internal Controls and Procedures**

As a publicly traded company, we are required to comply with the SEC's rules implementing Section 302 and 404 of the Sarbanes-Oxley Act, which require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of controls over financial reporting. For management's assessment of internal control over financial reporting required by Item 308(a) of Regulation S-K for the year ended December 31, 2021 see Part II—Item 9A – Controls and Procedures for management's report on the effectiveness of internal controls.

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

### **Quantitative and Qualitative Disclosure About Market Risk**

#### **Interest Rate Risk**

At December 31, 2021, we had \$1,246.7 million of debt outstanding, with a weighted average interest rate of 10.9%. Interest is calculated under the terms of our credit agreement based on the greatest of certain specified base rates plus an applicable margin that varies based on certain factors. Assuming no change in the amount outstanding, the impact on interest expense of a 1% increase or decrease in the assumed weighted average interest rate would be approximately \$12.5 million per year. In order to mitigate interest rate fluctuations with respect to term loan borrowings under the Credit Agreement, in November 2017, we entered into a three year one-month LIBOR interest rate swap contract with a notional amount of \$347.8 million, which at the time was the remaining principal balance of the term loan. The swap contract swaps out the floating rate interest risk related to the LIBOR with a fixed interest rate of 1.9275% effective January 12, 2018. The interest rate swap contract expired in January 2021.

The interest rate swap, which was used to manage our exposure to interest rate movements and other identified risks, was not designated as a hedge. As such, changes in the fair value of the derivative are recorded directly to other expense (income), net. Other expense (income), net includes a gain of \$0.1 million and \$0.4 million related to changes in the fair value of the interest rate swap for the years ended December 31, 2021 and 2020, respectively.

#### **Foreign Currency Risk**

We are exposed to foreign currency risks that arise from normal business operations. These risks include transaction gains and losses associated with intercompany loans with foreign subsidiaries and transactions denominated in currencies other than a location's functional currency. Contracts are denominated in currencies of major industrial countries.

#### **Market Risk**

We are exposed to market risks primarily from changes in interest rates and foreign currency exchange rates. We do not use derivatives for trading purposes, to generate income or to engage in speculative activity.

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

**FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The following financial statements are included herein:

<a href="#">Reports of Independent Registered Public Accounting Firm (PCAOB ID 185)</a>	65
<a href="#">Consolidated Balance Sheets as of December 31, 2021 and 2020</a>	69
<a href="#">Consolidated Statements of Operations for the years ended December 31, 2021, 2020, and 2019</a>	70
<a href="#">Consolidated Statements of Comprehensive Loss for the years ended December 31, 2021, 2020, and 2019</a>	71
<a href="#">Consolidated Statements of Stockholders' Deficit for the years ended December 31, 2021, 2020, and 2019</a>	72
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2021, 2020, and 2019</a>	75
<a href="#">Notes to the Consolidated Financial Statements</a>	76

## Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors  
Exela Technologies, Inc.:

### *Opinion on the Consolidated Financial Statements*

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

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated March 16, 2022 expressed an adverse opinion on the effectiveness of the Company's internal control over financial reporting.

### *Basis for Opinion*

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

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

### *Critical Audit Matter*

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

#### *Sufficiency of audit evidence over revenue*

As discussed in Note 2 to the consolidated financial statements, the Company reported revenue of \$1,166.6 million for the fiscal year ended December 31, 2021. Revenue is generated primarily from various forms of business and transaction processing services. The Company operates in multiple countries, with significant concentrations in the United States and EMEA, and is organized in three segments that are comprised of significant strategic business units.

We identified the evaluation of the sufficiency of audit evidence over revenue as a critical audit matter. Evaluating the sufficiency of audit evidence obtained required subjective auditor judgment because of the dispersion of the Company's revenue processing and recording activities between strategic business units and sources of revenues. This included determining the strategic business units and sources of revenues for which procedures were performed and evaluating the evidence obtained over revenue.

The following are the primary procedures we performed to address this critical audit matter. We applied auditor judgment to determine the nature and extent of procedures to be performed over revenue, including the determination of the strategic business units and sources of revenues for which those procedures were performed. For each source of revenue identified for testing, we selected a sample of transactions and compared the amounts recognized as revenue for consistency with relevant underlying documentation, including contracts and other third-party evidence. We evaluated the sufficiency of audit evidence obtained over revenue by assessing the results of the procedures performed, including appropriateness of the nature and extent of audit evidence.

/s/ KPMG LLP

We have served as the Company's auditor since 2013.

Detroit, Michigan  
March 16, 2022

## Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors  
Exela Technologies, Inc.:

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

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

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive loss, stockholders' deficit, and cash flows for each of the years in the three-year period ended December 31, 2021, and the related notes (collectively, the consolidated financial statements), and our report dated March 16, 2022 expressed an unqualified opinion on those consolidated financial statements.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The material weaknesses related to the following have been identified and included in management's assessment.

- The Company did not design, implement and operate effective process-level control activities related to order-to-cash (including revenue, customer deposits, accounts receivable and deferred revenue) and leases. The deficiencies related to the order-to-cash process also resulted in ineffective general information technology controls due to an incomplete understanding of the risks associated with relevant information technology;
- The Company did not sufficiently establish structures, reporting lines and appropriate authorities and responsibilities;
- The Company did not sufficiently attract, develop and retain competent resources and hold them accountable for their internal control responsibilities;
- Relevant and quality information to support the functioning of internal controls was not consistently generated or used by the Company to support the operation of internal controls; and
- Internal communication of information necessary to support the functioning of internal control was not sufficient.

The material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2021 consolidated financial statements, and this report does not affect our report on those consolidated financial statements.

### *Basis for Opinion*

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an

understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

*Definition and Limitations of Internal Control Over Financial Reporting*

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

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

/s/ KPMG LLP

Detroit, Michigan  
March 16, 2022



**Exela Technologies, Inc. and Subsidiaries**  
**Consolidated Balance Sheets**  
**For the years ended December 31, 2021 and 2020**  
**(in thousands of United States dollars except share and per share amounts)**

	December 31,	
	2021	2020
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 20,775	\$ 68,221
Restricted cash	27,285	2,088
Accounts receivable, net of allowance for doubtful accounts of \$6,049 and \$5,647, respectively	184,102	206,868
Related party receivables and prepaid expenses	715	711
Inventories, net	15,215	14,314
Prepaid expenses and other current assets	31,799	31,091
<b>Total current assets</b>	<b>279,891</b>	<b>323,293</b>
Property, plant and equipment, net of accumulated depreciation of \$196,683 and \$193,760, respectively	73,449	87,851
Operating lease right-of-use assets, net	53,937	68,861
Goodwill	358,323	359,781
Intangible assets, net	244,539	292,664
Deferred income tax assets	2,109	6,606
Other noncurrent assets	24,775	18,723
<b>Total assets</b>	<b>\$ 1,037,023</b>	<b>\$ 1,157,779</b>
<b>Liabilities and Stockholders' Equity (Deficit)</b>		
<b>Liabilities</b>		
Current liabilities		
Accounts payable	\$ 61,744	\$ 76,027
Related party payables	1,484	97
Income tax payable	3,551	2,466
Accrued liabilities	113,519	126,399
Accrued compensation and benefits	60,860	63,467
Accrued interest	10,075	48,769
Customer deposits	17,707	21,277
Deferred revenue	16,617	16,377
Obligation for claim payment	46,902	29,328
Current portion of finance lease liabilities	6,683	12,231
Current portion of operating lease liabilities	15,923	18,349
Current portion of long-term debts	144,828	39,952
<b>Total current liabilities</b>	<b>499,893</b>	<b>454,739</b>
Long-term debt, net of current maturities	1,104,399	1,498,004
Finance lease liabilities, net of current portion	9,156	13,287
Pension liabilities, net	28,383	35,515
Deferred income tax liabilities	11,594	9,569
Long-term income tax liabilities	3,201	2,759
Operating lease liabilities, net of current portion	41,170	56,814
Other long-term liabilities	5,999	13,624
<b>Total liabilities</b>	<b>1,703,795</b>	<b>2,084,311</b>
Commitments and Contingencies (Note 14)		
<b>Stockholders' equity (deficit)</b>		
Common Stock, par value of \$0.0001 per share; 1,600,000,000 shares authorized; 267,646,667 shares issued and 265,194,961 shares outstanding at December 31, 2021 and 51,693,931 shares issued and 49,242,225 shares outstanding at December 31, 2020	37	15
Preferred stock, par value of \$0.0001 per share; 20,000,000 shares authorized; 2,778,111 shares issued and outstanding at December 31, 2021 and 3,290,050 shares issued and outstanding at December 31, 2020	1	1
Additional paid in capital	838,853	446,739
Less: Common Stock held in treasury, at cost; 2,451,706 shares at December 31, 2021 and December 31, 2020	(10,949)	(10,949)
Equity-based compensation	56,123	52,183
Accumulated deficit	(1,532,428)	(1,390,038)
Accumulated other comprehensive loss:		
Foreign currency translation adjustment	(7,463)	(7,419)
Unrealized pension actuarial losses, net of tax	(10,946)	(17,064)
Total accumulated other comprehensive loss	(18,409)	(24,483)
<b>Total stockholders' deficit</b>	<b>(666,772)</b>	<b>(926,532)</b>
<b>Total liabilities and stockholders' deficit</b>	<b>\$ 1,037,023</b>	<b>\$ 1,157,779</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Exela Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Operations**  
**For the years ended December 31, 2021, 2020 and 2019**  
**(in thousands of United States dollars except share and per share amounts)**

	Years ended December 31,		
	2021	2020	2019
Revenue	\$ 1,166,606	\$ 1,292,562	\$ 1,562,337
Cost of revenue (exclusive of depreciation and amortization)	889,095	1,023,544	1,224,735
Selling, general and administrative expenses (exclusive of depreciation and amortization)	169,781	186,104	198,864
Depreciation and amortization	77,150	93,953	100,903
Impairment of goodwill and other intangible assets	—	—	349,557
Related party expense	9,191	5,381	9,501
<b>Operating profit (loss)</b>	<b>21,389</b>	<b>(16,420)</b>	<b>(321,223)</b>
<b>Other expense (income), net:</b>			
Interest expense, net	168,048	173,878	163,449
Debt modification and extinguishment costs (gain), net	(16,689)	9,589	1,404
Sundry expense (income), net	363	(153)	969
Other expense (income), net	401	(34,788)	14,429
<b>Net loss before income taxes</b>	<b>(130,734)</b>	<b>(164,946)</b>	<b>(501,474)</b>
Income tax expense	(11,656)	(13,584)	(7,642)
<b>Net loss</b>	<b>\$ (142,390)</b>	<b>\$ (178,530)</b>	<b>\$ (509,116)</b>
Cumulative dividends for Series A Preferred Stock	(1,576)	(1,309)	(3,309)
<b>Net loss attributable to common stockholders</b>	<b>\$ (143,966)</b>	<b>\$ (179,839)</b>	<b>\$ (512,425)</b>
<b>Loss per share:</b>			
Basic and diluted	\$ (1.22)	\$ (3.66)	\$ (10.55)

The accompanying notes are an integral part of these consolidated financial statements.

**Exela Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Comprehensive Loss**  
**For the years ended December 31, 2021, 2020 and 2019**  
**(in thousands of United States dollars)**

	Years ended December 31,		
	2021	2020	2019
<b>Net loss</b>	<b>\$ (142,390)</b>	<b>\$ (178,530)</b>	<b>\$ (509,116)</b>
<b>Other comprehensive income (loss), net of tax</b>			
Foreign currency translation adjustments	(44)	(90)	(906)
Unrealized pension actuarial gains (losses), net of tax	6,118	(9,005)	1,242
<b>Total other comprehensive loss, net of tax</b>	<b>\$ (136,316)</b>	<b>\$ (187,625)</b>	<b>\$ (508,780)</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Exela Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Stockholders' Deficit**  
**December 31, 2019**  
(in thousands of United States dollars except share and per share amounts)

	Common Stock		Preferred Stock		Treasury Stock		Additional Paid in Capital	Equity-Based Compensation	Accumulated Foreign Currency Translation Adjustment	Other Comprehensive Loss Unrealized Pension Actuarial Losses, net of tax	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount						
<b>Balances at January 1, 2019</b>	50,047,653	\$ 15	4,569,233	\$ 1	849,728	\$(10,342)	\$ 445,452	\$ 41,731	\$ (6,423)	\$ (9,301)	\$ (702,392)	\$ (241,259)
Net loss January 1 to December 31, 2019	—	—	—	—	—	—	—	—	—	—	(509,116)	(509,116)
Equity-based compensation	—	—	—	—	—	—	—	7,829	—	—	—	7,829
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	(906)	—	—	(906)
Net realized pension actuarial gains, net of tax	—	—	—	—	—	—	—	—	—	1,242	—	1,242
RSUs vested	203,494	—	—	—	—	—	—	—	—	—	—	—
Withholding of employee taxes on vested RSUs	—	—	—	—	—	—	—	(223)	—	—	—	(223)
Shares repurchased	(79,321)	—	—	—	79,321	(607)	—	—	—	—	—	(607)
Preferred shares converted to common	112,071	—	(275,000)	—	—	—	—	—	—	—	—	—
<b>Balances at December 31, 2019</b>	<b>50,283,897</b>	<b>\$ 15</b>	<b>4,294,233</b>	<b>\$ 1</b>	<b>929,049</b>	<b>\$(10,949)</b>	<b>\$ 445,452</b>	<b>\$ 49,337</b>	<b>\$ (7,329)</b>	<b>\$ (8,059)</b>	<b>\$ (1,211,508)</b>	<b>\$ (743,040)</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Exela Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Stockholders' Deficit**  
**December 31, 2020**  
(in thousands of United States dollars except share and per share amounts)

	Common Stock		Preferred Stock		Treasury Stock		Additional Paid in Capital	Equity-Based Compensation	Accumulated Other Comprehensive Loss		Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount			Foreign Currency Translation Adjustment	Unrealized Pension Actuarial Losses, net of tax		
<b>Balances at January 1, 2020</b>	50,283,897	\$ 15	4,294,233	\$ 1	929,049	\$(10,949)	\$ 445,452	\$ 49,337	\$ (7,329)	\$ (8,059)	\$ (1,211,508)	\$ (743,040)
Net loss												
January 1 to December 31, 2020	—	—	—	—	—	—	—	—	—	—	(178,530)	(178,530)
Equity-based compensation	—	—	—	—	—	—	—	2,846	—	—	—	2,846
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	(90)	—	—	(90)
Net realized pension actuarial gains, net of tax	—	—	—	—	—	—	—	—	—	(9,005)	—	(9,005)
Shares returned in connection with the Appraisal Action following repayment of Margin Loan	(1,523,578)	—	—	—	1,523,578	—	—	—	—	—	—	—
Preferred stock converted to Common Stock	409,238	—	(1,004,183)	—	—	—	—	—	—	—	—	—
Settlement gain on related party payable to Ex-Sigma 2 RSUs vested	71,747	—	—	—	—	—	1,287	—	—	—	—	1,287
Adjustment to number of shares withheld in lieu of tax obligation of RSU holders in the year 2018	921	—	—	—	(921)	—	—	—	—	—	—	—
<b>Balances at December 31, 2020</b>	<b>49,242,225</b>	<b>\$ 15</b>	<b>3,290,050</b>	<b>\$ 1</b>	<b>2,451,706</b>	<b>\$(10,949)</b>	<b>\$ 446,739</b>	<b>\$ 52,183</b>	<b>\$ (7,419)</b>	<b>\$ (17,064)</b>	<b>\$ (1,390,038)</b>	<b>\$ (926,532)</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Exela Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Stockholders' Deficit**  
**December 31, 2021**  
(in thousands of United States dollars except share and per share amounts)

	Common Stock		Preferred Stock		Treasury Stock		Additional Paid in Capital	Equity-Based Compensation	Accumulated Other Comprehensive Loss		Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount			Foreign Currency Translation Adjustment	Unrealized Pension Actuarial Losses, net of tax		
<b>Balances at January 1, 2021</b>	49,242,225	\$ 15	3,290,050	\$ 1	2,451,706	\$(10,949)	\$ 446,739	\$ 52,183	\$ (7,419)	\$ (17,064)	\$(1,390,038)	\$ (926,532)
Net loss												
January 1 to December 31, 2021	—	—	—	—	—	—	—	—	—	—	(142,390)	(142,390)
Equity-based compensation	—	—	—	—	—	—	—	3,940	—	—	—	3,940
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	(44)	—	—	(44)
Net realized pension actuarial gains, net of tax	—	—	—	—	—	—	—	—	—	6,118	—	6,118
Preferred shares converted to Common Stock	223,977	—	(511,939)	—	—	—	—	—	—	—	—	—
Payment for fractional shares on Reverse Stock Split	(5,445)	—	—	—	—	—	(14)	—	—	—	—	(14)
Issuance of Common Stock to existing directors under subscription agreements	403,769	—	—	—	—	—	530	—	—	—	—	530
Issuance of Common Stock from at the market offerings, net of offering costs	205,598,616	21	—	—	—	—	366,519	—	—	—	—	366,540
Issuance of Common Stock from private placement	9,731,819	1	—	—	—	—	25,079	—	—	—	—	25,080
<b>Balances at December 31, 2021</b>	<b>265,194,961</b>	<b>\$ 37</b>	<b>2,778,111</b>	<b>\$ 1</b>	<b>2,451,706</b>	<b>\$(10,949)</b>	<b>\$ 838,853</b>	<b>\$ 56,123</b>	<b>\$ (7,463)</b>	<b>\$ (10,946)</b>	<b>\$(1,532,428)</b>	<b>\$ (666,772)</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Exela Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Cash Flows**  
**For the years ended December 31, 2021, 2020 and 2019**  
(in thousands of United States dollars unless otherwise stated)

	Years ended December 31,		
	2021	2020	2019
<b>Cash flows from operating activities</b>			
Net loss	\$ (142,390)	\$ (178,530)	\$ (509,116)
Adjustments to reconcile net loss			
Depreciation and amortization	77,150	93,953	100,903
Original issue discount and debt issuance cost amortization	16,319	15,117	11,777
Debt modification and extinguishment costs (gain), net	(30,613)	8,296	1,049
Impairment of goodwill and other intangible assets	—	—	349,557
Provision for doubtful accounts	2,714	422	4,304
Deferred income tax provision	6,649	7,940	1,093
Share-based compensation expense	3,940	2,846	7,827
Unrealized foreign currency losses	173	(414)	(511)
Loss (Gain) on sale of assets	(960)	(43,338)	556
Fair value adjustment for interest rate swap	(125)	(375)	4,337
Change in operating assets and liabilities, net of effect from acquisitions			
Accounts receivable	17,438	54,538	4,410
Prepaid expenses and other assets	(1,597)	(1,379)	(4,825)
Accounts payable and accrued liabilities	(61,068)	12,015	(19,588)
Related party payables	1,382	(353)	(14,339)
Additions to outsource contract costs	(546)	(519)	(1,285)
<b>Net cash used in operating activities</b>	<b>(111,534)</b>	<b>(29,781)</b>	<b>(63,851)</b>
<b>Cash flows from investing activities</b>			
Purchase of property, plant and equipment	(14,574)	(11,663)	(14,360)
Additions to internally developed software	(1,954)	(3,825)	(6,182)
Cash paid for acquisition, net of cash received	—	(12,500)	(5,000)
Cash paid for earnouts	—	(700)	—
Proceeds from sale of assets	7,267	50,126	360
<b>Net cash provided by (used in) investing activities</b>	<b>(9,261)</b>	<b>21,438</b>	<b>(25,182)</b>
<b>Cash flows from financing activities</b>			
Proceeds from issuance of Common Stock from private placement	25,065	—	—
Proceeds from issuance of Common Stock from at the market offerings	379,963	—	—
Proceeds from directors' equity contribution	269	—	—
Repurchases of Common Stock	—	—	(3,480)
Cash paid for equity issuance costs from at the market offerings	(13,423)	—	—
Borrowings under factoring arrangement and Securitization Facilities	142,501	297,673	68,283
Principal repayment on borrowings under factoring arrangement and Securitization Facilities	(144,965)	(203,841)	(64,976)
Cash paid for withholding taxes on vested RSUs	—	(7)	(223)
Lease terminations	(1,303)	(337)	(318)
Cash paid for debt issuance costs	(1,181)	(16,205)	(7)
Principal payments on finance lease obligations	(11,471)	(12,758)	(20,465)
Borrowings from senior secured revolving facility	11,000	29,750	206,500
Repayments on senior secured revolving facility	(55)	(14,200)	(141,500)
Proceeds from issuance of 2026 Notes	3,574	—	—
Proceeds from senior secured term loans	—	—	29,850
Repayments on senior secured term loan and 2023 Notes as part of debts exchanges	(309,305)	—	—
Borrowings from other loans	126,352	29,260	39,153
Cash paid for debt repurchases	(71,184)	—	—
Principal repayments on senior secured term loans and other loans	(37,186)	(45,973)	(53,678)
<b>Net cash provided by financing activities</b>	<b>98,651</b>	<b>63,362</b>	<b>59,139</b>
Effect of exchange rates on cash	(105)	1,191	139
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>(22,249)</b>	<b>56,210</b>	<b>(29,755)</b>
Cash, restricted cash, and cash equivalents			
Beginning of period	70,309	14,099	43,854
End of period	<u>\$ 48,060</u>	<u>\$ 70,309</u>	<u>\$ 14,099</u>
<b>Supplemental cash flow data:</b>			
Income tax payments, net of refunds received	\$ 3,765	\$ 2,695	\$ 7,882
Interest paid	188,802	152,678	144,456
<b>Noncash investing and financing activities:</b>			
Assets acquired through right-of-use arrangements	3,270	4,372	10,732
Leasehold improvements funded by lessor	125	—	—
Settlement gain on related party payable to Ex-Sigma 2	—	1,287	—
Accrued capital expenditures	1,652	2,124	1,402

The accompanying notes are an integral part of these consolidated financial statements.



## **1. Description of the Business**

### **Organization**

Exela Technologies, Inc. (the “Company” or “Exela”) is a global provider of transaction processing solutions, enterprise information management, document management and digital business process services. The Company provides mission-critical information and transaction processing solutions services to clients across three major industry verticals: (1) Information & Transaction Processing, (2) Healthcare Solutions, and (3) Legal and Loss Prevention Services. The Company manages information and document driven business processes and offers solutions and services to fulfill specialized knowledge-based processing and consulting requirements, enabling clients to concentrate on their core competencies. Through its outsourcing solutions, the Company enables businesses to streamline their internal and external communications and workflows.

The Company was originally incorporated in Delaware on July 15, 2014 as a special purpose acquisition company under the name Quinpario Acquisition Corp 2 (“Quinpario”) for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination involving Quinpario and one or more businesses or entities. On July 12, 2017 (the “Closing”), the Company consummated its business combination with SourceHOV Holdings, Inc. (“SourceHOV”) and Novitex Holdings, Inc. (“Novitex”) pursuant to the Business Combination Agreement, dated February 21, 2017, among the Company, Quinpario Merger Sub I, Inc., Quinpario Merger Sub II, Inc., SourceHOV, Novitex, HOVS LLC, HandsOn Fund 4 I, LLC and Novitex Parent, L.P., as amended (the “Novitex Business Combination”). In connection with the Closing, the Company changed its name from Quinpario Acquisition Corp 2 to Exela Technologies, Inc. Unless the context otherwise requires, the “Company” refers to the combined company and its subsidiaries following the Novitex Business Combination, “Quinpario” refers to the Company prior to the closing of the Novitex Business Combination, “SourceHOV” refers to SourceHOV prior to the Novitex Business Combination or SourceHOV on a standalone basis and “Novitex” refers to Novitex prior to the Novitex Business Combination.

## **2. Basis of Presentation and Summary of Significant Accounting Policies**

The following is a summary of the significant accounting policies consistently applied in the preparation of the accompanying consolidated financial statements.

### **Basis of Presentation**

The accompanying consolidated financial statements and related notes to the consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“U.S. GAAP”) and in accordance with the rules and regulations of the Securities and Exchange Commission (“SEC”).

The Company raised \$406.8 million in gross proceeds from equity financings during the year ended December 31, 2021 (Note 17) and reduced indebtedness by \$338.5 million during the year ended December 31, 2021, and has materially reduced its current liabilities. As a result of this, the substantial doubt regarding the Company’s ability to meet its obligation as they become due within one year after the date of the financial statements are issued which was raised by management prior to the second quarter of 2021, is not applicable since the end of the second quarter of 2021 through and as of the date of these financial statements.

### **Principles of Consolidation**

The accompanying consolidated financial statements and related notes to the consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation. In addition, the Company evaluates its relationships with other entities to identify whether they are variable interest entities as defined by the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 810-10, Consolidation and whether the Company is the primary beneficiary. Consolidation is required if both of these criteria are met.

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period.

### **Use of Estimates in Preparation of the Financial Statements**

Estimates and judgments relied upon in preparing these consolidated financial statements include revenue recognition for multiple element arrangements, allowance for doubtful accounts, income taxes, depreciation, amortization, employee benefits, equity-based compensation, contingencies, goodwill, intangible assets, right of use assets and obligation, pension obligations, pension assets, fair value of assets and liabilities acquired in acquisitions, and asset and liability valuations. The Company regularly assesses these estimates and records changes in estimates in the period in which they become known. The Company bases its estimates on historical experience and various other assumptions that the Company believes to be reasonable under the circumstances. Actual results could differ from those estimates.

### **Impact of COVID-19**

The coronavirus pandemic (“COVID-19”) continues to expose our global operations to risks. COVID-19 continues to result in challenging operating environments and has affected almost all of the countries and territories in which we operate. Authorities across the world have implemented measures like travel bans, quarantines, curfews, restrictions on public gatherings, shelter in place orders, business shutdowns and closures to control the spread of COVID-19. These measures, alongside the virus itself, have impacted, and we expect will continue to impact, us, our customers, suppliers and other third parties with whom we do business, as well as the global economy, demand for our services and spending across many sectors, as a whole. While some jurisdictions have now started to implement plans for reopening, there are others which have had to return to restrictions due to increased spread of COVID-19.

The Company is dependent on its workforce to deliver its solutions and services. While we have developed and implemented health and safety protocols, business continuity plans and crisis management protocols in an effort to try to mitigate the negative impact of COVID-19, restrictions such as shutdowns, social distancing and stay-at-home orders in various jurisdictions have impacted and will continue to impact the Company’s ability to deploy its workforce effectively. Vaccination availability in certain countries is limited and that is resulting in some of our employees not being available. We have been performing and delivering all of our essential services out of our facilities and delivery centers. Most of our customer site employees (onsite) continue to perform the work and take directions from our customers. A part of our non-essential services related workforce has started to operate from offices and delivery centers, but many are still operating in a remote work environment.

Currently we are experiencing minor changes in work types, and this may evolve over the remaining year as customer’s priorities are changing and customers are pushing for more automation. The full impact of the COVID-19 outbreak continues to evolve as of the date of this report and the extent to which COVID-19 will ultimately impact the Company’s business depends upon various dynamic factors which are difficult to reliably predict. Management continues to actively monitor the global situation and its impact on the Company’s financial condition, liquidity, operations, suppliers, industry, and workforce. Overall, in light of the changing nature and continuing uncertainty around the COVID-19 pandemic, our ability to fully estimate the impact of COVID-19 on our results of operations, financial condition, or liquidity in future periods remains limited. Shifts in our customers’ priorities and changes to the transaction types offered are still evolving and the dynamic situation hinders reliable forecasting. The effects of the pandemic on our business are unlikely to be fully realized, or reflected in our financial results, until future periods.

### **Segment Reporting**

The Company consists of the following three segments:

1. *Information & Transaction Processing Solutions (“ITPS”)*. ITPS provides industry-specific solutions for banking and financial services, including lending solutions for mortgages and auto loans, and banking solutions for

clearing, anti-money laundering, sanctions, and interbank cross-border settlement; property and casualty insurance solutions for origination, enrollments, claims processing, and benefits administration communications; public sector solutions for income tax processing, benefits administration, and record management; multi-industry solutions for payment processing and reconciliation, integrated receivables and payables management, document logistics and location services, records management and electronic storage of data, documents; and software, hardware, professional services and maintenance related to information and transaction processing automation, among others.

2. *Healthcare Solutions (“HS”)*. HS offerings include revenue cycle solutions, integrated accounts payable and accounts receivable, and information management for both the healthcare payer and provider markets. Payer service offerings include claims processing, claims adjudication and auditing services, enrollment processing and policy management, and scheduling and prescription management. Provider service offerings include medical coding and insurance claim generation, underpayment audit and recovery, and medical records management.

3. *Legal and Loss Prevention Services (“LLPS”)*. LLPS solutions include processing of legal claims for class action and mass action settlement administrations, involving project management support, notification and outreach to claimants, collection, analysis and distribution of settlement funds. Additionally, LLPS provides data and analytical services in the context of litigation consulting, economic and statistical analysis, expert witness services, and revenue recovery services for delinquent accounts receivable.

### **Cash and Cash Equivalents**

Cash and cash equivalents include cash deposited with financial institutions and liquid investments with original maturity dates equal to or less than three months. All bank deposits and money market accounts are considered cash and cash equivalents. The Company holds cash and cash equivalents at major financial institutions, which often exceed Federal Deposit Insurance Corporation insured limits. Historically, the Company has not experienced any losses due to bank depository concentration.

Certificates of deposit and fixed deposits whose original maturity is greater than three months and one year or less are classified as short-term investments, and certificates of deposit and fixed deposits whose maturity is greater than one year at the balance sheet date are classified as non-current assets in the consolidated balance sheets. The purchase of any certificates of deposit or fixed deposits that are classified as short-term investments or non-current assets appear in the investing section of the consolidated statements of cash flows.

### **Obligation for Claim Payment**

As part of the Company's legal claims processing service, the Company holds cash for various settlement funds. Some of the cash is used to pay tax obligations and other liabilities of the settlement funds. The Company has recorded a liability for the settlement funds received, which is included in Obligation for claim payment in the consolidated balance sheets, of \$46.9 million and \$29.3 million at December 31, 2021 and 2020, respectively.

### **Accounts Receivable and Allowance for Doubtful Accounts**

Accounts receivable are carried at the original invoice amount less an estimate made for doubtful accounts. Revenue that has been earned but remains unbilled at the end of the period is recorded as a component of accounts receivable, net. The Company specifically analyzes accounts receivable and historical bad debts, customer credit-worthiness, current economic trends, and changes in customer payment terms and collection trends when evaluating the adequacy of its allowance for doubtful accounts. The Company writes off accounts receivable balances against the allowance for doubtful accounts, net of any amounts recorded in deferred revenue, when it becomes probable that the receivable will not be collected.

## **Inventories**

Our inventories primarily include heavy-duty scanners and related parts, toner, paper stock, envelopes and postage supplies. Inventories are stated at the lower of cost or net realizable values and include the cost of raw materials, labor, and purchased subassemblies. Cost is determined using the weighted average method.

## **Property, Plant and Equipment**

Property, plant, and equipment are recorded at cost less accumulated depreciation. Depreciation is computed using the straight-line method (which approximates the use of the assets) over the estimated useful lives of the assets. When these assets are sold or otherwise disposed of, the asset and related depreciation is relieved, and any gain or loss is included in the consolidated statements of operations for the period of sale or disposal. Leasehold improvements are amortized over the lease term or the useful life of the asset, whichever is shorter. Repair and maintenance costs are expensed as incurred.

## **Intangible Assets**

### *Customer Relationships*

Customer relationship intangible assets represent customer contracts and relationships obtained as part of acquired businesses. Customer relationship values are estimated by evaluating various factors including historical attrition rates, contractual provisions and customer growth rates, among others. The estimated average useful lives of customer relationships range from 4 to 16 years depending on facts and circumstances. These intangible assets are primarily amortized based on undiscounted cash flows. The Company evaluates the remaining useful life of intangible assets on an annual basis to determine whether events and circumstances warrant a revision to the remaining useful life.

### *Trade Names*

The Company has determined that its trade name intangible assets are indefinite-lived assets and therefore are not subject to amortization. Trade names are tested for impairment as per the Company's policy for impairment of indefinite-lived assets.

### *Trademarks*

The Company has determined that its trademark intangible assets resulting from acquisitions are definite-lived assets and therefore are subject to amortization. The Company amortizes such trademarks on a straight-line basis over the estimated useful life, which is typically one year. As of December 31, 2021 these trademarks were fully amortized.

### *Developed Technology*

The Company has acquired various developed technologies embedded in its technology platform. Developed technology is an integral asset to the Company in providing solutions to customers and is recorded as an intangible asset. The Company amortizes developed technology on a straight-line basis over the estimated useful life, which is typically 5 to 8.5 years.

### *Capitalized Software Costs*

The Company capitalizes certain costs incurred to develop software products to be sold, leased or otherwise marketed after establishing technological feasibility in accordance with ASC section 985-20, *Software—Costs of Software to Be Sold, Leased, or Marketed*, and the Company capitalizes costs to develop or purchase internal-use software in accordance with ASC section 350-40, *Intangibles—Goodwill and Other— Internal-Use Software*. Significant estimates and assumptions include determining the appropriate period over which to amortize the capitalized costs based on estimated useful lives and estimating the marketability of the commercial software products and related future

revenues. The Company amortizes capitalized software costs on a straight-line basis over the estimated useful life, which is typically 3 to 5 years.

#### *Outsourced Contract Costs*

Costs of outsourcing contracts, including costs incurred for bid and proposal activities, are generally expensed as incurred. However, certain costs incurred upon initiation of an outsourcing contract are deferred and expensed on a straight-line basis over the estimated contract term. These costs represent incremental external costs or certain specific internal costs that are directly related to the contract acquisition or fulfillment activities and can be separated into two principal categories: contract commissions and set-up/fulfillment costs. Contract fulfillment costs are capitalized only if they are directly attributable to a specifically anticipated future contract; represent the enhancement of resources that will be used in satisfying a future performance obligation (the services under the anticipated contract); and are expected to be recovered.

#### *Non-compete Agreements*

The Company acquired certain non-compete agreements in connection with the Novitex Business Combination. These were related to four Novitex executives that were terminated following the acquisition. As of December 31, 2021 these agreements were fully amortized.

#### *Assembled Workforce*

The Company acquired an assembled workforce in an asset purchase transaction in the fourth quarter of 2018. The Company recognized an intangible asset for the acquired assembled workforce and amortizes the asset on a straight-line basis over the estimated useful life of four years.

### **Impairment of Indefinite-Lived Assets**

The Company conducts its annual indefinite-lived assets impairment tests on October 1st of each year for its indefinite-lived assets, or more frequently if indicators of impairment exist. When performing the impairment test, the Company has the option of performing a qualitative or quantitative assessment to determine if an impairment has occurred. A quantitative assessment requires comparison of fair value of the asset to its carrying value. If carrying value of the indefinite-lived assets exceeds fair value, the Company recognizes an impairment loss by an amount which is equal to the excess of carrying value over fair value. The Company utilizes the Income Approach, specifically the Relief-from-Royalty method, which has the basic tenet that a user of that intangible asset would have to make a stream of payments to the owner of the asset in return for the rights to use that asset. *Refer to Note 9- Intangible Assets and Goodwill* for additional discussion of impairment of trade names.

### **Impairment of Long-Lived Assets**

The Company reviews the recoverability of its long-lived assets, including finite-lived trade names, trademarks, customer relationships, developed technology, capitalized software costs, outsourced contract costs, acquired software, workforce, and property, plant and equipment, when events or changes in circumstances occur that indicate that the carrying value of the asset may not be recoverable. The assessment of possible impairment is based on the ability to recover the carrying value of the asset from the expected future cash flows (undiscounted and without interest charges) of the related operations. If these cash flows are less than the carrying value of such asset, an impairment loss is recognized for the difference between estimated fair value and carrying value. The primary measure of fair value is based on discounted cash flows based in part on the financial results and the expectation of future performance.

The Company did not record any material impairment related to its property, plant, and equipment, customer relationships, trademarks, developed technology, capitalized software cost, assembled workforce or outsourced contract costs for the years ended December 31, 2021, 2020, and 2019.

## Goodwill

Goodwill represents the excess purchase price over tangible and intangible assets acquired less liabilities assumed arising from business combinations. Goodwill is generally allocated to reporting units based upon relative fair value (taking into consideration other factors such as synergies) when an acquired business is integrated into multiple reporting units. The Company's reporting units are at the operating segment level, for which discrete financial information is prepared and regularly reviewed by management. When a business within a reporting unit is disposed of, goodwill is allocated to the disposed business using the relative fair value method.

The Company conducts its annual goodwill impairment tests on October 1st of each year, or more frequently if indicators of impairment exist. When performing the annual impairment test, the Company has the option of performing a qualitative or quantitative assessment to determine if an impairment has occurred. If a qualitative assessment indicates that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, the Company would be required to perform a quantitative impairment analysis for goodwill. The quantitative analysis requires a comparison of fair value of the reporting unit to its carrying value, including goodwill. If the carrying value of the reporting unit exceeds its fair value, an impairment loss is recognized in an amount equal to that excess, limited to the total amount of goodwill allocated to that reporting unit. The Company uses a combination of the Guideline Public Company Method of the Market Approach and the Discounted Cash Flow Method of the Income Approach to determine the reporting unit fair value. Refer to Note 9- *Intangible Assets and Goodwill* for additional discussion of impairment of goodwill.

## Derivative Instruments and Hedging Activities

As required by ASC 815—*Derivatives and Hedging*, the Company records all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge. The Company may enter into derivative contracts that are intended to economically hedge certain of its risk, even though hedge accounting does not apply or the Company elects not to apply hedge accounting.

The Company's objective in using interest rate derivatives was to manage its exposure to variable interest rates related to its term loans under the Credit Agreement. In order to accomplish this objective, in November 2017, the Company entered into a three year, one-month LIBOR interest rate contract with a notional amount of \$347.8 million, which at the time was the remaining principal balance of such term loans. The swap contract swapped out the floating rate interest risk related to the LIBOR with a fixed interest rate of 1.9275% paid semi-annually starting January 12, 2018.

There is no open swap position as of December 31, 2021 as the existing interest rate swap contract expired in January 2021. The following table summarizes the Company's interest rate swap positions as of December 31, 2020:

Effective date	Maturity date	December 31, 2020	
		(In Millions) Notional Amount	Weighted Average Interest Rate
1/12/2018	1/12/2021	\$ 328.1	1.9275 %

The interest rate swap, which was used to manage the Company's exposure to interest rate movements and other identified risks, was not designated as a hedge. As such, the change in the fair value of the derivative was recorded directly in other income (expense), net. Other income (expense), net includes a gain of \$0.1 million and \$0.4 million related to the change in fair value of the interest rate swap for the years ended December 31, 2021 and 2020, respectively. The fair value of the interest rate swap was recorded in the accrued liabilities on the consolidated balance sheet.

## **Benefit Plan Accruals**

The Company has defined benefit plans in the U.K and Germany, under which participants earn a retirement benefit based upon a formula set forth in the respective plans. The Company records annual amounts relating to its pension plans based on calculations that incorporate various actuarial and other assumptions, including discount rates, mortality, assumed rates of return, and compensation increases. The Company reviews its assumptions on an annual basis and makes modifications to the assumptions based on current rates and trends when it is appropriate to do so.

## **Leases**

The Company determines if a contract is, or contains, a lease at contract inception. Operating leases are included in operating lease right-of-use ("ROU") assets, current portion of operating lease liabilities and operating lease liabilities, net of current portion in the Company's consolidated balance sheet. Finance leases are included in property, plant and equipment, current portion of finance lease liabilities and finance lease liabilities, net of current portion in the Company's consolidated balance sheet.

ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. In addition, ROU assets include initial direct costs incurred by the lessee as well as any lease payments made at or before the commencement date, and exclude lease incentives. As most of the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. We use the implicit rate when readily determinable. Lease terms include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Leases with a term of one year or less are not recorded on the balance sheet.

Finance lease ROU assets are amortized over the lease term or the useful life of the asset, whichever is shorter. The amortization of finance lease ROU assets is recorded in depreciation expense in the consolidated statements of operations. For operating leases, we recognize expense for lease payments on a straight-line basis over the lease term.

## **Stock-Based Compensation**

The Company accounts for all equity-classified awards under stock-based compensation plans at their "fair value". This fair value is measured at the fair value of the awards at the grant date and recognized as compensation expense on a straight-line basis over the vesting period. The fair value of the awards on the grant date is determined using the stock price on the respective grant date in the case of restricted stock units and using an option pricing model in the case of stock options. The expense resulting from share-based payments is recorded in Selling, general and administrative expense in the accompanying consolidated statements of operations.

## **Revenue Recognition**

We account for revenue in accordance with ASC 606, *Revenue from Contracts with Customers*. 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. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring goods or providing services. The contract transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. All of our material sources of revenue are derived from contracts with customers, primarily relating to the provision of business and transaction processing services within each of our segments. We do not have any significant extended payment terms, as payment is received shortly after goods are delivered or services are provided.

### ***Nature of Services***

Our primary performance obligations are to stand ready to provide various forms of business processing services, consisting of a series of distinct services that are substantially the same and have the same pattern of transfer over time,



and accordingly are combined into a single performance obligation. Our promise to our customers is typically to perform an unknown or unspecified quantity of tasks and the consideration received is contingent upon the customers' use (i.e., number of transactions processed, requests fulfilled, etc.); as such, the total transaction price is variable. We allocate the variable fees to the single performance obligation charged to the distinct service period in which we have the contractual right to bill under the contract.

### ***Disaggregation of Revenues***

The following tables disaggregate revenue from contracts by geographic region and by segment for the years ended December 31, 2021, 2020, and 2019:

	Year Ended December 31,											
	2021				2020				2019			
	ITPS	HS	LLPS	Total	ITPS	HS	LLPS	Total	ITPS	HS	LLPS	Total
U.S.A.	\$649,505	\$217,839	\$74,641	\$ 941,985	\$ 769,487	\$219,047	\$68,472	\$1,057,006	\$ 958,625	\$256,721	\$71,332	\$1,286,678
EMEA	205,772	—	—	205,772	213,418	—	—	213,418	248,466	—	—	248,466
Other	18,849	—	—	18,849	22,138	—	—	22,138	27,193	—	—	27,193
Total	<u>\$874,126</u>	<u>\$217,839</u>	<u>\$74,641</u>	<u>\$1,166,606</u>	<u>\$1,005,043</u>	<u>\$219,047</u>	<u>\$68,472</u>	<u>\$1,292,562</u>	<u>\$1,234,284</u>	<u>\$256,721</u>	<u>\$71,332</u>	<u>\$1,562,337</u>

### ***Contract Balances***

The following table presents contract assets, contract liabilities and contract costs recognized at December 31, 2021 and 2020:

	December 31, 2021	December 31, 2020
Accounts receivable, net	\$ 184,102	\$ 206,868
Deferred revenues	17,518	16,919
Customer deposits	17,707	21,277
Costs to obtain and fulfill a contract	2,328	3,295

Accounts receivable, net includes \$22.6 million and \$23.2 million as of December 31, 2021 and 2020, respectively, representing amounts not billed to customers. We have accrued the unbilled receivables for work performed in accordance with the terms of contracts with customers.

Deferred revenues relate to payments received in advance of performance under a contract. A significant portion of this balance relates to maintenance contracts or other service contracts where we received payments for upfront conversions or implementation activities which do not transfer a service to the customer but rather are used in fulfilling the related performance obligations that transfer over time. The advance consideration received from customers is deferred over the contract term. We recognized revenue of \$17.2 million during the year ended December 31, 2021 that had been deferred as of December 31, 2020.

Costs incurred to obtain and fulfill contracts are deferred and presented as part of intangible assets, net and expensed on a straight-line basis over the estimated benefit period. We recognized \$1.5 million and \$2.4 million of amortization for these costs in 2021 and 2020, respectively, within depreciation and amortization expense. These costs represent incremental external costs or certain specific internal costs that are directly related to the contract acquisition or fulfillment and can be separated into two principal categories: contract commissions and fulfillment costs. Applying the practical expedient in ASC 340-40-25-4, we recognize the incremental costs of obtaining contracts as an expense when incurred if the amortization period would have been one year or less. These costs are included in Selling, general and administrative expenses. The effect of applying this practical expedient was not material.

Customer deposits consist primarily of amounts received from customers in advance for postage. These advanced postage deposits are used to cover the costs associated with postage, with the corresponding postage revenue being recognized as services are performed.

### ***Performance Obligations***

At the inception of each contract, we assess the goods and services promised in our contracts and identify each distinct performance obligation. The majority of our contracts have a single performance obligation, as the promise to transfer the individual goods or services is not separately identifiable from other promises in the contracts. For the majority of our business and transaction processing service contracts, revenues are recognized as services are provided based on an appropriate input or output method, typically based on the related labor or transactional volumes.

Certain of our contracts have multiple performance obligations, including contracts that combine software implementation services with post-implementation customer support. For contracts with multiple performance obligations, we allocate the contract's transaction price to each performance obligation using our best estimate of the standalone selling price of each distinct good or service in the contract. The primary method used to estimate standalone selling price is the expected cost plus a margin approach, under which we estimate our expected costs of satisfying a performance obligation and add an appropriate margin for that distinct good or service. We also use the adjusted market approach whereby we estimate the price that customers in the market would be willing to pay. In assessing whether to allocate variable consideration to a specific part of the contract, we consider the nature of the variable payment and whether it relates specifically to its efforts to satisfy a specific part of the contract. Certain of our software implementation performance obligations are satisfied at a point in time, typically when customer acceptance is obtained.

When evaluating the transaction price, we analyze, on a contract-by-contract basis, all applicable variable consideration. The nature of our contracts gives rise to variable consideration, including volume discounts, contract penalties, and other similar items that generally decrease the transaction price. We estimate these amounts based on the expected amount to be provided to customers and reduce revenues recognized. We do not anticipate significant changes to our estimates of variable consideration.

We include reimbursements from customers, such as postage costs, in revenue, while the related costs are included in cost of revenue.

### ***Transaction Price Allocated to the Remaining Performance Obligations***

In accordance with optional exemptions available under ASC 606, we did not disclose the value of unsatisfied performance obligations for (a) contracts with an original expected length of one year or less, and (b) contracts for which variable consideration relates entirely to an unsatisfied performance obligation, which comprise the majority of our contracts. We have certain non-cancellable contracts where we receive a fixed monthly fee in exchange for a series of distinct services that are substantially the same and have the same pattern of transfer over time, with the corresponding remaining performance obligations as of December 31, 2021 in each of the future periods below:

#### **Estimated Remaining Fixed Consideration for Unsatisfied Performance Obligations**

2022	\$ 42,700
2023	35,449
2024	31,126
2025	28,316
2026	570
2027 and thereafter	—
Total	\$ 138,161

### **Research and Development**

Research and development costs are expensed as incurred. Research and development costs expensed for the years ended December 31, 2021, 2020, and 2019 were \$1.3 million, \$1.1 million, and \$1.7 million, respectively.

## **Advertising**

Advertising costs are expensed as incurred. Advertising expense for the years ended December 31, 2021, 2020, and 2019, were \$0.4 million, \$0.7 million, and \$1.1 million, respectively.

## **Income Taxes**

The Company accounts for income taxes by using the asset and liability method. The Company accounts for income taxes regarding uncertain tax positions and recognized interest and penalties related to uncertain tax positions in income tax benefit/(expense) in the consolidated statements of operations.

Deferred income taxes are recognized on the tax consequences of temporary differences by applying enacted statutory tax rates applicable in future years to differences between the financial statement carrying amounts and the tax bases of existing assets and liabilities, as determined under tax laws and rates. A valuation allowance is provided when it is more likely than not that all or some portion of the deferred tax assets will not be realized. Due to numerous ownership changes, the Company is subject to limitations on existing net operating losses under Section 382 of the Internal Revenue Code (the "Code"). Accordingly, valuation allowances have been established against a portion of the net operating losses to reflect estimated Section 382 limitations. The Company also considered the realizability of net operating losses not limited by Section 382. The Company did not consider future book income as a source of taxable income when assessing if a portion of the deferred tax assets are more likely than not to be realized. However, scheduling the reversal of existing deferred tax liabilities indicated that a portion of the deferred tax assets are likely to be realized. Therefore, partial valuation allowances were established against a portion of the Company's deferred tax assets. In the event the Company determines that it would be able to realize deferred tax assets that have valuation allowances established, an adjustment to the net deferred tax assets would be recognized as a component of income tax expense through continuing operations.

The Company engages in transactions (i.e. acquisitions) in which the tax consequences may be subject to uncertainty and examination by the varying taxing authorities. Therefore, judgment is required by the Company in assessing and estimating the tax consequences of these transactions. While the Company's tax returns are prepared and based on the Company's interpretation of tax laws and regulations, in the normal course of business the tax returns are subject to examination by the various taxing authorities. Such examinations may result in future assessments of additional tax, interest and penalties. For purposes of the Company's income tax provision, a tax benefit is not recognized if the tax position is not more likely than not to be sustained based solely on its technical merits. Considerable judgment is involved in determining which tax positions are more likely than not to be sustained. *Refer to Note 12 - Income Taxes* for further information.

## **Loss Contingencies**

The Company reviews the status of each significant matter, if any, and assesses its potential financial exposure considering all available information including, but not limited to, the impact of negotiations, settlements, rulings, advice of legal counsel and other updated information and events pertaining to a particular matter. If the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated, the Company accrues a liability for the estimated loss. Judgment is required in both the determination of probability and the determination as to whether an exposure is reasonably estimable. Because of uncertainties related to loss contingencies, accruals are based on the best information available at the time. As additional information becomes available, the Company reassesses the potential liability related to its pending claims and litigation, and may revise its estimates. These revisions in the estimates of the potential liabilities could have a material impact on the results of operations and financial position of the Company. The Company's liabilities exclude any estimates for legal costs not yet incurred associated with handling these matters.

## **Operations**

A portion of the Company's labor and operations is situated outside of the United States in India and other locations. The carrying value of long-lived assets that are situated outside of the United States is approximately \$26.8 million and \$31.2 million as of December 31, 2021 and 2020, respectively.

## **Foreign Currency Translation**

The functional currency for the Company's production operations located in India, Philippines, China, and Mexico is the United States dollar. Included in other expense as Sundry expense (income), net in the consolidated statements of operations are net exchange loss of \$0.2 million for the year ended December 31, 2021 and net exchange gain of \$0.4 million and \$0.5 million for the years ended December 31, 2020 and 2019, respectively.

The Company has determined all other international subsidiaries' functional currency is the local currency. These assets and liabilities are translated at exchange rates in effect at the balance sheet date while income and expense amounts are translated at average exchange rates during the period. The resulting foreign currency translation adjustments are disclosed as a separate component of other comprehensive loss.

## **Beneficial Conversion Feature**

The Company's Series A Perpetual Convertible Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock") contains a beneficial conversion feature, which arises when a debt or equity security is issued with an embedded conversion option that is beneficial to the investor or in the money at inception because the conversion option has an effective strike price that is less than the market price of the underlying stock at the commitment date. The Company recognized the beneficial conversion feature by allocating the intrinsic value of the conversion option, which is the number of shares of Common Stock available upon conversion multiplied by the difference between the effective conversion price per share and the fair value of Common Stock per share on the commitment date, to additional paid-in capital, resulting in a discount on the Series A Preferred Stock. As a result of the occurrence of events meeting the definition of a "Fundamental Change" as defined in the Certificate of Designations, Preferences, Rights and Limitations of Series A Perpetual Convertible Preferred Stock of the Company during the period, the Company recognized the entire dividend equivalent of \$16.4 million as of December 31, 2017. There was no dividend equivalent recognized in 2019, 2020 and 2021.

## **Net Loss per Share**

Earnings per share ("EPS") is computed by dividing net loss available to holders of the Company's issued and outstanding shares of common stock, par value \$0.0001 per share ("Common Stock") by the weighted average number of shares of Common Stock outstanding during the period, excluding the effects of any potentially dilutive securities. Diluted EPS gives effect to the potential dilution that could occur if securities or other contracts to issue Common Stock were exercised or converted into Common Stock, using the more dilutive of the two-class method and if-converted method in periods of earnings. The two class method is an earnings allocation method that determines earnings per share (when there are earnings) for Common Stock and participating securities. The if-converted method assumes all convertible securities are converted into Common Stock. Diluted EPS excludes all dilutive potential shares of Common Stock if their effect is anti-dilutive.

As the Company experienced net losses for the periods presented, the impact of the Company's Series A Convertible Preferred Stock ("Series A Preferred Stock") was calculated using the if-converted method. As of December 31, 2021, the outstanding shares of the Company's Series A Preferred Stock, if converted would have resulted in an additional 1,309,187 shares of Common Stock outstanding, however, they were not included in the computation of diluted loss per share as their effects were anti-dilutive.

The Company was originally incorporated as a special purpose acquisition company under the name Quinpario Acquisition Corp 2 ("Quinpario"), which changed its name to Exela Technologies, Inc. in July 2017. The Company has not included the effect of 35,000,000 warrants sold in the Quinpario Initial Public Offering ("IPO") or the effect of the

aggregate number of shares issuable pursuant to outstanding restricted stock units, performance units and options of 11,314,307, 1,662,155 and 1,749,002, respectively in the calculation of diluted loss per share for the years ended December 31, 2021, 2020 and 2019 as their effects were anti-dilutive (i.e. reduces the net loss per share).

The components of basic and diluted EPS are as follows. All shares and per share amounts for the years 2020 and 2019 have been adjusted for a one share-for-three shares reverse stock split which took effect on January 26, 2021:

	Year Ended December 31,		
	2021	2020	2019
Net loss attributable to common stockholders (A)	\$ (143,966)	\$ (179,839)	\$ (512,425)
Weighted average common shares outstanding - basic and diluted (B)	118,001,162	49,144,429	48,572,979
<b>Loss Per Share:</b>			
Basic and diluted (A/B)	\$ (1.22)	\$ (3.66)	\$ (10.55)

The weighted average common shares outstanding - basic and diluted, in the table above, exclude in each case the 1,523,578 shares returned to the Company in the first quarter of 2020 in connection with the Appraisal Action (as defined and described further in Note 14 below) which became treasury stock, but which were included in the number of shares of Common Stock outstanding as of December 31, 2019.

### Business Combinations

The Company includes the results of operations of the businesses acquired as of the respective dates of acquisition. The Company allocates the fair value of the purchase price of acquisitions to the assets acquired and liabilities assumed based on their estimated fair values. The excess of the fair value of the purchase price over the fair values of these identifiable assets and liabilities is recorded as goodwill.

### Fair Value Measurements

The Company records the fair value of assets and liabilities in accordance with ASC 820, *Fair Value Measurement* ("ASC 820"). ASC 820 defines fair value as the price received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and in the principal or most advantageous market for that asset or liability. The fair value should be calculated based on assumptions that market participants would use in pricing the asset or liability, not on assumptions specific to the entity.

In addition to defining fair value, ASC 820 expands the disclosure requirements around fair value and establishes a fair value hierarchy for valuation inputs. The hierarchy prioritizes the inputs into three levels based on the extent to which inputs used in measuring fair value are observable in the market. Each fair value measurement is reported in one of the three levels, which is determined by the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

Level 1 — quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 — quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.

Level 3 — unobservable inputs reflecting management's own assumptions about the inputs used in pricing the asset or liability at fair value.

*Refer to Note 15 — Fair Value Measurement for further discussion.*

## Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist primarily of cash and cash equivalents and trade receivables. The Company maintains its cash and cash equivalents and certain other financial instruments with highly rated financial institutions and limits the amount of credit exposure with any one financial institution. From time to time, the Company assesses the credit worthiness of its customers. Credit risk on trade receivables is minimized because of the large number of entities comprising the Company's client base and their dispersion across many industries and geographic areas. The Company generally has not experienced any material losses related to receivables from any individual customer or groups of customers. The Company does not require collateral. Due to these factors, no additional credit risk beyond amounts provided for collection losses is believed by management to be probable in the Company's accounts receivable, net. The Company does not have any significant customers that account for 10% or more of the total consolidated revenues.

## Recently Adopted Accounting Pronouncements

Effective January 1, 2021, the Company adopted Accounting Standards Update ("ASU") no. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. This ASU simplifies the accounting for income taxes by eliminating some exceptions to the general approach in ASC 740, Income Taxes, for recognizing deferred taxes for investments, performing intraperiod allocation and calculating income taxes in interim periods. The ASU adds guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. It also clarifies certain aspects of the existing guidance to promote more consistent application, among other things. The adoption had no material impact on the Company's consolidated results of operations, cash flows, financial position or disclosures.

## Recently Issued Accounting Pronouncements

In October 2021, the FASB issued ASU no. 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. The ASU amends ASC 805 to add contract assets and contract liabilities to the list of exceptions to the recognition and measurement principles that apply to business combinations and to require that an entity (acquirer) recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606. While primarily related to contract assets and contract liabilities that were accounted for by the acquiree in accordance with ASC 606, the amendments also apply to contract assets and contract liabilities from other contracts to which the provisions of Topic 606 apply, such as contract liabilities from the sale of nonfinancial assets within the scope of Subtopic 610-20. The ASU should be applied prospectively and is effective for the Company for fiscal years beginning after December 15, 2022, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact that adopting this standard will have on the consolidated financial statements.

In July 2021, the FASB issued ASU no. 2021-05, *Leases (Topic 842): Lessors — Certain Leases with Variable Lease Payments*. The ASU requires a lessor to classify a lease with variable lease payments that do not depend on an index or rate as an operating lease on the commencement date of the lease if specified criteria are met. The ASU is applied prospectively and is effective for the Company for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact that adopting this standard will have on the consolidated financial statements.

In May 2021, the FASB issued ASU no. 2021-04, *Earnings Per Share (Topic 260), Debt — Modifications and Extinguishments (Subtopic 470-50), Compensation — Stock Compensation (Topic 718), and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options (a consensus of the Emerging Issues Task Force)*. The ASU requires issuers to account for modifications or exchanges of freestanding equity-classified written call options that remain equity classified after the modification or exchange based on the economic substance of the modification or exchange. Under the ASU, an issuer determines the accounting for the modification or exchange based on whether the transaction was done to issue equity, to issue or modify debt, or for other reasons. The ASU is applied prospectively and is effective for the Company for fiscal years beginning after December 15, 2021, and interim periods within those fiscal

years. Early adoption is permitted. The Company is currently evaluating the impact that adopting this standard will have on the consolidated financial statements.

In August 2020, the FASB issued ASU no. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity*. The ASU eliminates two models in ASC 470-20 for convertible instruments that require separate accounting for embedded conversion features namely cash conversion model and beneficial conversion feature model. The guidance also requires entities to use the if-converted method for all convertible instruments in the diluted earnings per share calculation and include the effect of share settlement for instruments that may be settled in cash or shares. The ASU is effective for the Company for fiscal years beginning after December 15, 2021, including interim periods therein. Early adoption is permitted. The Company is currently evaluating the impact that adopting this standard will have on the consolidated financial statements.

In June 2016, the FASB issued ASU no. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, to replace the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company will be required to use a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. This ASU along with related additional clarificatory guidance in the ASU No. 2019-05, “*Financial Instruments—Credit Losses (Topic 326)*” and ASU No. 2019-11, “*Codification Improvements to Topic 326, Financial Instruments—Credit Losses*”, is effective for the Company for fiscal years beginning after December 15, 2022, and interim periods within those fiscal years. Adoption of the standard will be applied using a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the effective date. The Company is currently evaluating the impact that adopting this standard will have on the consolidated financial statements.

### 3. Sale of Non-Core Assets

On March 16, 2020, the Company and its indirect wholly owned subsidiaries, Merco Holdings, LLC and SourceHOV Tax, LLC entered into a Membership Interest Purchase Agreement with Gainline Source Intermediate Holdings LLC at which time Gainline Source Intermediate Holdings LLC acquired all of the outstanding membership interests of SourceHov Tax, LLC for \$40.0 million subject to adjustment as set forth in the purchase agreement. The Company recognized a gain of \$35.5 million on the sale of SourceHOV Tax, LLC during the first quarter of 2020. The gain on sale of SourceHOV Tax, LLC is included in Other expense (income), net in the consolidated statements of operations for the year ended December 31, 2020.

On July 22, 2020, the Company completed the sale of its physical records storage and logistics business for a purchase price of \$12.3 million. The Company recognized a gain of \$8.7 million on the sale of physical records storage and logistics business during the third quarter of 2020. The gain on sale of physical records storage and logistics business is included in Other expense (income), net in the consolidated statements of operations for the year ended December 31, 2020.

### 4. Inventories

Inventories, net consist of the following:

	December 31,	
	2021	2020
Work in process	\$ 973	\$ 961
Finished goods	11,480	12,312
Supplies and parts	7,028	5,473
Less: Allowance for obsolescence	(4,266)	(4,432)
	<u>15,215</u>	<u>14,314</u>



## 5. Accounts Receivable

Accounts receivable, net consist of the following:

	December 31,	
	2021	2020
Billed receivables	\$ 160,407	\$ 179,696
Unbilled receivables	22,570	23,210
Other	7,174	9,609
Less: Allowance for doubtful accounts	(6,049)	(5,647)
	<u>\$ 184,102</u>	<u>\$ 206,868</u>

Unbilled receivables represent balances recognized as revenue that have not been billed to the customer. The Company's allowance for doubtful accounts is based on a policy developed by historical experience and management judgment. Adjustments to the allowance for doubtful accounts may occur based on market conditions or specific client circumstances.

## 6. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following:

	December 31,	
	2021	2020
Prepays	\$ 22,880	\$ 30,459
Deposits	8,919	632
	<u>\$ 31,799</u>	<u>\$ 31,091</u>

## 7. Leases

The Company leases numerous facilities worldwide with larger concentrations of space in Texas, Michigan, Connecticut, California, India, Mexico, the Philippines, and China. The Company's facilities house general offices, sales offices, service locations, and production facilities. Substantially all of the Company's operations facilities are leased under long-term leases with varying expiration dates, except for the few owned locations. The Company regular obtains various machinery, equipment, vehicles and furniture on leases. The machinery and equipment leases mainly include leasing of computers, servers, other IT equipment, mailing system, production equipment, generators, office equipment, printers, copiers and miscellaneous warehouse equipment.

The Company's ROU assets and lease liabilities as of December 31, 2021 and 2020 recorded on the consolidated balance sheet are as follows:

	December 31, 2021	December 31, 2020
<i>Balance sheet location:</i>		
<b>Operating Lease</b>		
Operating lease right-of-use assets, net	\$ 53,937	\$ 68,861
Current portion of operating lease liabilities	15,923	18,349
Operating lease liabilities, net of current portion	41,170	56,814
<b>Finance Lease</b>		
Finance lease right-of-use assets, net (included in property, plant and equipment, net)	8,918	17,164
Current portion of finance lease liabilities	6,683	12,231
Finance lease liabilities, net of current portion	9,156	13,287

Supplemental balance sheet information related to leases is as follows:

	December 31, 2021	December 31, 2020
<b>Weighted-average remaining lease term</b>		
Operating leases	4.3 Years	4.8 Years
Finance leases	2.4 Years	3.7 Years
<b>Weighted-average discount rate</b>		
Operating leases	13.1%	11.9%
Finance leases	12.4%	10.7%

The interest on financing lease liabilities was \$2.3 million and \$2.6 million for the year ended December 31, 2021 and 2020, respectively. The amortization expense on finance lease right-of-use assets was \$9.1 million and \$12.8 million for the year ended December 31, 2021 and 2020, respectively.

Maturities of finance and operating lease liabilities based on lease term for the next five years are as follows:

	Finance Leases	Operating Leases
2022	\$ 8,288	\$ 22,028
2023	4,581	16,468
2024	3,902	12,813
2025	2,065	8,862
2026	203	7,073
2027 and thereafter	—	8,083
Total lease payments	<u>19,039</u>	<u>75,327</u>
Less: Imputed interest	<u>(3,200)</u>	<u>(18,234)</u>
Present value of lease liabilities	<u>\$ 15,839</u>	<u>\$ 57,093</u>

Consolidated rental expense for all operating leases was \$51.8 million, \$69.1 million, and \$77.3 million for the years ended December 31, 2021, 2020, and 2019, respectively.

The following table summarizes the cash paid and related right-of-use operating finance or operating lease recognized for the years ended December 31, 2021 and 2020.

	Year Ended December 31, 2021	Year Ended December 31, 2020
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>		
Operating cash flows from operating leases	\$ 25,950	\$ 34,193
Financing cash flows from finance leases	11,471	12,925
<b>Right-of-use lease assets obtained in the exchange for lease liabilities:</b>		
Operating leases	6,507	23,644
Finance leases	3,270	4,372

## 8. Property, Plant and Equipment, Net

Property, plant, and equipment, which include assets recorded under finance leases, are stated at cost less accumulated depreciation, and amortization, and consist of the following:

	Estimated Useful Lives (in Years)	December 31,	
		2021	2020
Land	N/A	\$ 6,688	\$ 6,903
Buildings and improvements	7 – 40	20,268	20,688
Leasehold improvements	Shorter of life of improvement or lease term	36,289	39,797
Vehicles	5 – 7	311	337
Machinery and equipment	5 – 15	26,346	22,991
Computer equipment and software	3 – 8	102,746	99,434
Furniture and fixtures	5 – 15	8,478	8,599
Finance lease right-of-use assets	Shorter of life of the asset or lease term	69,006	82,862
		270,132	281,611
Less: Accumulated depreciation and amortization		(196,683)	(193,760)
Property, plant and equipment, net		\$ 73,449	\$ 87,851

Depreciation expense related to property, plant and equipment was \$26.7 million, \$39.2 million, and \$41.4 million for the years ended December 31, 2021, 2020, and 2019, respectively.

## 9. Intangible Assets and Goodwill

### Intangibles

Intangible assets are stated at cost or acquisition-date fair value less amortization and impairment and consist of the following:

	Weighted Average Remaining Useful Life (in Years)	December 31, 2021		
		Gross Carrying Amount (a)	Accumulated Amortization	Intangible Asset, net
Customer relationships	9.5	\$ 508,241	\$ (316,084)	\$ 192,157
Developed technology	2.8	88,553	(87,612)	941
Trade names (b)	Indefinite-lived	8,400	(3,100)	5,300
Outsource contract costs	3.6	16,814	(14,486)	2,328
Internally developed software	3.2	49,108	(27,812)	21,296
Assembled workforce	1	4,473	(3,355)	1,118
Purchased software	12	26,749	(5,350)	21,399
Intangibles, net		\$ 702,338	\$ (457,799)	\$ 244,539

	Weighted Average Remaining Useful Life (in Years)	December 31, 2020		
		Gross Carrying Amount (a)	Accumulated Amortization	Intangible Asset, net
Customer relationships	10.2	\$ 508,485	\$ (278,306)	\$ 230,179
Developed technology	3.4	88,553	(87,111)	1,442
Trade names (b)	Indefinite-lived	8,400	(3,100)	5,300
Outsource contract costs	3.3	16,331	(13,036)	3,295
Internally developed software	3.7	47,182	(20,152)	27,030
Assembled workforce	2	4,473	(2,237)	2,236
Purchased software	13	26,749	(3,567)	23,182
Intangibles, net		<u>\$ 700,173</u>	<u>\$ (407,509)</u>	<u>\$ 292,664</u>

(a) Amounts include intangibles acquired in business combinations and asset acquisitions.

(b) The carrying amount of trade names for 2021 and 2020 is net of accumulated impairment losses of \$44.1 million. Carrying amount of \$5.3 million as at December 31, 2021 represents indefinite-lived intangible asset.

In connection with the completion of the annual impairment tests as of October 1, 2021 and 2020, the Company recorded no impairment charge to goodwill and trade names.

The impairment charges for the year 2019 are included within Impairment of goodwill and other intangible assets in the consolidated statements of operations.

Aggregate amortization expense related to intangibles was \$50.5 million, \$54.7 million, and \$59.3 million for the years ended December 31, 2021, 2020, and 2019, respectively.

Estimated intangibles amortization expense for the next five years and thereafter consists of the following:

	Estimated Amortization Expense
2022	\$ 47,395
2023	38,619
2024	30,944
2025	23,416
2026	19,269
Thereafter	79,243
	<u>\$ 238,886</u>

## Goodwill

Goodwill by reporting segment consists of the following:

	Balances as at January 1, 2020 (a)	Additions	Deletions	Impairments	Currency Translation Adjustments	Balances as at December 31, 2020 (a)
ITPS	\$ 254,120	\$ —	\$ —	\$ —	\$ 10	\$ 254,130
HS	86,786	—	—	—	—	86,786
LLPS	18,865	—	—	—	—	18,865
<b>Total</b>	<u>\$ 359,771</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 10</u>	<u>\$ 359,781</u>

	Balances as at January 1, 2021 (a)	Additions	Deletions	Impairments	Currency Translation Adjustments	Balances as at December 31, 2021 (a)
ITPS	\$ 254,130	\$ —	\$ (825)	\$ —	\$ (633)	\$ 252,672
HS	86,786	—	—	—	—	86,786
LLPS	18,865	—	—	—	—	18,865
<b>Total</b>	<b>\$ 359,781</b>	<b>\$ —</b>	<b>\$ (825)</b>	<b>\$ —</b>	<b>\$ (633)</b>	<b>\$ 358,323</b>

- (a) The goodwill amount for all periods presented is net of accumulated impairment amounts. Accumulated impairment relating to ITPS is \$316.5 million as at December 31, 2021; and \$317.5 million as at December 31, 2020 and December 31, 2019. Accumulated impairment relating to LLPS is \$243.4 million as at December 31, 2021, December 31, 2020 and December 31, 2019.

## 10. Accrued Liabilities and Other Long-Term Liabilities

Accrued liabilities consist of the following:

	December 31,	
	2021	2020
Accrued taxes (exclusive of income taxes)	\$ 9,858	\$ 12,953
Accrued lease exit obligations	36	270
Accrued professional and legal fees	29,119	33,897
Accrued appraisal action liability	63,422	60,654
Accrued legal reserve for pending litigation	8,046	15,146
Accrued transaction costs	2,305	2,739
Other accruals	733	740
	<b>\$ 113,519</b>	<b>\$ 126,399</b>

Other Long-term liabilities consist of the following:

	December 31,	
	2021	2020
Deferred revenue	\$ 901	\$ 542
Accrued rent	—	449
Accrued lease exit obligations	195	195
Accrued compensation expense	1,578	1,897
Cares Act payroll tax deferrals	—	7,183
Other	3,325	3,358
	<b>\$ 5,999</b>	<b>\$ 13,624</b>

## 11. Long-Term Debt and Credit Facilities

### Senior Credit Facilities

On July 12, 2017, subsidiaries of the Company entered into a First Lien Credit Agreement with Royal Bank of Canada, Credit Suisse AG, Cayman Islands Branch, Natixis, New York Branch and KKR Corporate Lending LLC (the "Credit Agreement") providing Exela Intermediate LLC, a wholly owned subsidiary of the Company, upon the terms and subject to the conditions set forth in the Credit Agreement, (i) a \$350.0 million senior secured term loan maturing July 12, 2023 with an original issue discount of \$7.0 million, and (ii) a \$100.0 million senior secured revolving facility maturing July 12, 2022 (the "Revolving Credit Facility").

The Credit Agreement provided for the following interest rates for borrowings under the senior secured term facility and the Revolving Credit Facility: at the borrower's option, either (1) an adjusted LIBOR, subject to a 1.0% floor

in the case of term loans, or (2) a base rate, in each case plus an applicable margin. The initial applicable margin for the senior secured term facility was 7.5% with respect to LIBOR borrowings and 6.5% with respect to base rate borrowings. The initial applicable margin for the Revolving Credit Facility was 7.0% with respect to LIBOR borrowings and 6.0% with respect to base rate borrowings. The applicable margin for borrowings under the Revolving Credit Facility is subject to step-downs based on leverage ratios. The senior secured term loan is subject to amortization payments, commencing on the last day of the first full fiscal quarter of the Company following the closing date, of 0.6% of the aggregate principal amount for each of the first eight payments and 1.3% of the aggregate original principal amount for payments thereafter, with any balance due at maturity.

#### *Term Loan Repricing*

On July 13, 2018, Exela executed a transaction to reprice the \$343.4 million of term loans outstanding under its senior secured credit facilities (the “Repricing”). The Repricing was accomplished pursuant to a First Amendment to the First Lien Credit Agreement (the “First Amendment”), dated as of July 13, 2018, by and among the Company’s subsidiaries Exela Intermediate Holdings LLC, Exela Intermediate, LLC, each “Subsidiary Loan Party” listed on the signature pages thereto, Royal Bank of Canada, as administrative agent, and each of the lenders party thereto, whereby such subsidiaries borrowed \$343.4 million of refinancing term loans (the “Repricing Term Loans”) to refinance their existing senior secured term loans.

In accordance with ASC 470 – *Debt – Modifications and Extinguishments*, as a result of certain lenders that participated in Exela’s debt structure prior to the Repricing and the Company’s debt structure after the Repricing, it was determined that a portion of the refinancing of Exela’s senior secured credit facilities would be accounted for as a debt modification, and the remaining would be accounted for as an extinguishment. The Company incurred \$1.0 million in new debt issuance costs related to the refinancing, of which \$1.0 million was expensed pursuant to modification accounting. The proportion of debt that was extinguished resulted in a write off of previously recognized debt issue costs of \$0.1 million. Additionally, for the new lenders who exceeded the 10% test, less than \$0.1 million was recorded as additional debt issue costs. All unamortized costs and discounts will be amortized over the life of the new term loan using the effective interest rate of the term loan.

The Repricing Term Loans will bear interest at a rate per annum of, at the borrower’s option, either (a) a LIBOR rate determined by reference to the costs of funds for Eurodollar deposits for the interest period relevant to such borrowing, adjusted for certain additional costs, subject to a 1.0% floor, or (b) a base rate determined by reference to the highest of (i) the federal funds rate plus 0.5%, (ii) the prime rate and (iii) the one-month adjusted LIBOR plus 1.0%, in each case plus an applicable margin of 6.5% for LIBOR loans and 5.5% for base rate loans. The interest rates applicable to the Repricing Term Loans are 100 basis points lower than the interest rates applicable to the existing senior secured term loans that were incurred on July 12, 2017 pursuant to the Credit Agreement. The Repricing Term Loans will mature on July 12, 2023, the same maturity date as the prior senior secured term loans.

#### *2018 Incremental Term Loans*

On July 13, 2018, the Company’s subsidiaries borrowed an additional \$30.0 million pursuant to incremental term loans (the “Incremental Term Loans”) under the First Amendment. The proceeds of the Incremental Term Loans may be used by the Company for general corporate purposes and to pay fees and expenses in connection with the First Amendment. The interest rates applicable to the Incremental Term Loans are the same as those for the Repricing Term Loans.

The borrower may voluntarily repay the Repricing Term Loans and the Incremental Term Loans (collectively, the “Term Loans”) at any time, without prepayment premium or penalty, subject to customary “breakage” costs with respect to LIBOR rate loans. The Incremental Term Loans will mature on July 12, 2023, the same maturity date as the Repricing Term Loans and prior senior secured term loans.

Other than as described above, the terms, conditions and covenants applicable to the Repricing Term Loans and the Incremental Term Loans are consistent with the terms, conditions and covenants that were applicable to the existing senior secured loans under the Credit Agreement.

### *2019 Incremental Term Loan*

On April 16, 2019, the Company's subsidiaries borrowed an additional \$30.0 million pursuant to incremental term loans (the "2019 Incremental Term Loans") under the Second Amendment to First Lien Credit Agreement (the "Second Amendment"). The proceeds of the 2019 Incremental Term Loans were used to replace the cash spent for acquisitions, pay related fees, expenses and related borrowings and for general corporate purposes. The 2019 Incremental Term Loans will mature on July 12, 2023, the same maturity date as the Incremental Term Loans, Repricing Term Loans and prior senior secured term loans under the Credit Agreement.

The 2019 Incremental Term Loans will bear interest at a rate per annum that is the same as the Repricing Term Loans under the senior credit facility. The 2019 Incremental Term Loans will mature on July 12, 2023, the same maturity date as the Term Loans. The borrower may voluntarily repay the 2019 Incremental Term Loans at any time, without prepayment premium or penalty, subject to customary "breakage" costs with respect to LIBOR rate loans.

Other than as described above, the terms, conditions and covenants applicable to the 2019 Incremental Term Loans are consistent with the terms, conditions and covenants that are applicable to the Repricing Term Loans and 2018 Incremental Term Loans under the Credit Agreement. The Repricing and issuance of the 2018 and 2019 Incremental Term Loans resulted in a partial debt extinguishment, for which Exela recognized \$1.4 million in debt extinguishment costs during the year ended December 31, 2019, reported within Debt modification and extinguishment costs (gain), net within our consolidated statements of operations.

### *Third Amendment*

On May 18, 2020, subsidiaries of the Company amended the Credit Agreement (the Third Amendment to First Lien Credit Agreement (the "Third Amendment") to, among other things, extend the time for delivery of its audited financial statements for the year ended December 31, 2019 and its financial statements for the quarter ended March 31, 2020. Upon the Company's delivery of the annual and quarterly financial statements within the time frames stated therein (which the Company satisfied during the month of June 2020), the borrower became in compliance with respect to the financial statement delivery requirements set forth in the Credit Agreement. Pursuant to the Third Amendment, the borrowers also amended the Credit Agreement to, among other things: restrict the borrower and its subsidiaries' ability to designate or invest in unrestricted subsidiaries; incur certain debt; create certain liens; make certain investments; pay certain dividends or other distributions on account of its equity interests; make certain asset sales or other dispositions (or utilize the proceeds of certain asset sales to reinvest in the business); or enter into certain affiliate transactions pursuant to the negative covenants under the Credit Agreement. Further, pursuant to the amendment, the borrower under the Credit Agreement was also required to maintain a minimum Liquidity (as defined in the amendment) of \$35.0 million. In connection with this amendment, the borrower paid a forbearance fee of \$5 million to the consenting lenders. The Company concluded that the amendment represents modification of debt under ASC 470-50. Accordingly, the forbearance fee paid was added to unamortized debt issuance cost which shall be amortized using updated effective interest rate based on modified cash flows.

### *Private Exchange*

On December 9, 2021, in a separate transaction referred to as "Private Exchange" (outside of the Public Exchange as discussed below), subsidiaries of the Company agreed with three (3) of their term loan lenders for partial repayment and partial exchange of their outstanding balance of senior secured term loan under Credit Agreement for the new 2026 Notes. The borrower agreed with these participating lenders to repay outstanding balance of \$212.1 million of senior secured term loan under Credit Agreement payable to them in cash consideration of \$84.3 million and in new 2026 Notes of \$127.8 million. In connection with the Private Exchange transaction, the exchanging lenders provided consents to amend the Credit Agreement to (i) eliminate all affirmative covenants, (ii) eliminate all negative covenants and (iii) eliminate certain events of default (other than events of default relating to payment obligations). The Company concluded that the exchange of senior secured term loan for 2026 Notes and cash under Private Exchange represented modification of debt under ASC 470-50. Accordingly, \$1.0 million of the fees paid to third parties was charged to consolidated statement of operations and reported within Debt modification and extinguishment costs (gain), net within our consolidated statements of operations for the year ended December 31, 2021.



As a result of the Private Exchange, repurchases (as discussed below) and periodic principal repayments, \$93.2 million aggregate principal amount of the senior secured term loan remains outstanding as of December 31, 2021.

*Revolving Credit Facility; Letters of Credit*

As of December 31, 2021 and December 31, 2020, our \$100 million Revolving Credit Facility was fully drawn taking into account letters of credit issued thereunder. As of December 31, 2021 and December 31, 2020, there were outstanding irrevocable letters of credit totaling approximately \$0.5 million and \$19.5 million, respectively, under the Revolving Credit Facility.

**Senior Secured 2023 Notes**

On July 12, 2017, subsidiaries of the Company issued \$1.0 billion in aggregate principal amount of 10.0% First Priority Senior Secured Notes due 2023 (the “2023 Notes”). The 2023 Notes are guaranteed by nearly all U.S. subsidiaries of the Company. The 2023 Notes bear interest at a rate of 10.0% per year. The issuers pay interest on the 2023 Notes on January 15 and July 15 of each year, commencing on January 15, 2018. The 2023 Notes will mature on July 15, 2023. As of December 31, 2021, the Company was in compliance with all covenants required under the 2023 Notes.

*Public Exchange*

On October 27, 2021, the Company launched an offer to exchange (the “Public Exchange”) up to \$225.0 million in cash and new 11.500% First-Priority Senior Secured Notes due 2026 (the “2026 Notes”) for the Company’s outstanding 2023 Notes. The Public Exchange was for \$900 in cash per \$1,000 principal amount of 2023 Notes tendered subject to proration. The maximum amount of cash to be paid was \$225.0 million and the offer was not subject to any minimum participation condition. In case of oversubscription to the cash offer, tendered 2023 Notes would be accepted for cash on a pro rata basis (as a single class). The balance of any tendered 2023 Notes not accepted for cash would be exchanged into 2026 Notes on the basis of \$1,000 principal amount of new 2026 Notes for each \$1,000 principal amount of outstanding 2023 Notes tendered.

As of the expiration time of the Public Exchange, \$912,660,000 aggregate principal amount, or approximately 91.3%, of the 2023 Notes were validly tendered pursuant to the Public Exchange. On December 9, 2021, upon the settlement of the Public Exchange, \$662,660,000 aggregate principal amount of the 2026 Notes were issued and an aggregate \$225.0 million in cash (plus accrued but unpaid interest) was paid to participating holders in respect of the validly tendered 2023 Notes. The Company concluded that the exchange of notes under Public Exchange represented modification of debt under ASC 470-50. Accordingly, \$12.9 million of the fees paid to third parties was charged to consolidated statement of operations and reported within Debt modification and extinguishment costs (gain), net within our consolidated statements of operations for the year ended December 31, 2021.

As a result of the Public Exchange and repurchases (as discussed below), \$22.8 million aggregate principal amount of the 2023 Notes remains outstanding as of December 31, 2021.

*Third Supplemental Indenture*

In conjunction with the Public Exchange, the Company also solicited consents to amend certain provisions in the indenture governing the 2023 Notes (“Notes Amendments”). On December 1, 2021, on receipt of the requisite consents to the Notes Amendments, the Company, and Wilmington Trust, National Association, as trustee (the “2023 Notes Trustee”), entered into a third supplemental indenture (the “Third Supplemental Indenture”) to the indenture, dated as of July 12, 2017 (as amended and supplemented by (i) the first supplemental indenture, dated as of July 12, 2017 and (ii) the second supplemental indenture, dated as of May 20, 2020, the “2023 Notes Indenture”) governing the outstanding 2023 Notes. The Third Supplemental Indenture amends the 2023 Notes Indenture and the 2023 Notes to eliminate substantially all of the restrictive covenants, eliminate certain events of default, modify covenants regarding mergers and consolidations and modify or eliminate certain other provisions, including certain provisions relating to

future guarantors and defeasance, contained in the 2023 Notes Indenture and the 2023 Notes. In addition, all of the collateral securing the 2023 Notes was released pursuant to the Third Supplemental Indenture.

### **Senior Secured 2026 Notes**

On December 9, 2021, subsidiaries of the Company issued \$790.5 million in aggregate principal amount of 11.5% First Priority Senior Secured Notes due 2026 under certain Public Exchange and Private Exchange transactions as discussed above. Apart from this, during December 2021 the Company issued and sold \$4.5 million in aggregate principal amount of 2026 Notes generating net proceeds of \$3.6 million. The 2026 Notes are guaranteed by nearly all U.S. subsidiaries of the Company. The 2026 Notes bear interest at a rate of 11.5% per year. The issuers shall pay interest on the 2026 Notes on January 15 and July 15 of each year, commencing on July 15, 2022. The 2026 Notes will mature on July 12, 2026. As of December 31, 2021, the Company was in compliance with all covenants required under the 2026 Notes.

On or after December 1, 2022, the issuers may redeem the 2026 Notes in whole or in part from time to time, at a redemption price of 100%, plus accrued and unpaid interest, if any, to, but excluding, the applicable redemption date. In addition, prior to December 1, 2022, the issuers may redeem the 2026 Notes in whole or in part from time to time, at a redemption price equal to 100% of the principal amount of the 2026 Notes redeemed, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding, the applicable redemption date. "Applicable Premium" means, with respect to any 2026 Note on any applicable redemption date, as determined by the issuers, the greater of: (1) 1% of the then outstanding principal amount of the 2026 Note; and (2) the excess of: (a) the present value at such redemption date of (i) the redemption price of the 2026 Note, at December 1, 2022 plus (ii) all required interest payments due on the 2026 Note through December 1, 2022 (excluding accrued but unpaid interest), computed using a discount rate equal to the treasury rate as of such redemption date plus 50 basis points; over (b) the then outstanding principal amount of the 2026 Note.

### **Repurchases**

In July 2021 the Company commenced a debt buyback program to repurchase 2023 Notes and senior secured term loans under the Credit Agreement, which is ongoing. During the year ended December 31, 2021, we repurchased \$64.5 million of the outstanding principal amount of our 2023 Notes for a net cash consideration of \$48.4 million. The gain on early extinguishment of debt for the 2023 Notes during the year ended December 31, 2021 totaled \$15.3 million and is inclusive of \$0.6 million and \$0.2 million write off of original issue discount and debt issuance costs, respectively. During the year ended December 31, 2021, we also repurchased \$40.0 million of the outstanding principal amount of our senior secured term loans under the Credit Agreement for a net cash consideration of \$22.8 million. The gain on early extinguishment of debt for the senior secured term loans during the year ended December 31, 2021 totaled \$15.3 million and is inclusive of \$0.4 million and \$1.5 million write off of original issue discount and debt issuance costs, respectively. Gain on the early extinguishment of debt during the year ended December 31, 2021 is reported within Debt modification and extinguishment costs (gain), net within our consolidated statements of operations.

### **BRCC Facility**

On November 17, 2021, GP2 XCV, LLC, a subsidiary of the Company ("GP2 XCV"), entered into a borrowing facility with B. Riley Commercial Capital, LLC pursuant to which the Company was able to borrow an original principal amount of \$75.0 million, which was later increased to \$115.0 million as of December 7, 2021 (as the same may be amended from time to time, the "BRCC Facility"). The BRCC Facility is secured by a lien on all the assets of GP2 XCV and by a pledge of the equity of GP2 XCV. GP2 XCV is a bankruptcy-remote entity and as such its assets are not available to other creditors of the Company or any of its subsidiaries other than GP2 XCV. The BRCC Facility will mature on March 31, 2023. Interest under the BRCC Facility accrues at a rate of 11.5% per annum and is payable quarterly on the last business day of each March, June, September and December. The purpose of this facility was to fund certain repurchases of senior secured term loan under the Credit Agreement and to provide funding of Public Exchange transaction and Private Exchange transaction as discussed above. As of December 31, 2021, there were borrowings of \$115.0 million outstanding under the BRCC Facility. As of December 31, 2021, the Company was in compliance with all covenants required under the BRCC Facility.

## Securitization Facilities

On January 10, 2020, certain subsidiaries of the Company entered into a \$160.0 million accounts receivable securitization facility with a five year term (“A/R Facility”). In the A/R Facility, (i) Exela Receivables 1, LLC (the “A/R Borrower”), a wholly-owned indirect subsidiary of the Company, entered into a Loan and Security Agreement (the “A/R Loan Agreement”), dated as of January 10, 2020, with TPG Specialty Lending, Inc., as administrative agent (the “A/R Administrative Agent”), PNC Bank National Association, as LC Bank (the “A/R LC Bank”), the lenders (each, an “A/R Lender” and collectively the “A/R Lenders”) and the Company, as initial servicer, pursuant to which the A/R Lenders made loans (the “A/R Loan”) to the A/R Borrower used to purchase certain receivables and related assets from its sole member, Exela Receivables Holdco, LLC (the “A/R Parent SPE”), a wholly-owned indirect subsidiary of the Company, (ii) sixteen other indirect, wholly-owned U.S. subsidiaries of the Company (collectively, the “A/R Originators”) sold or contributed to the A/R Parent SPE certain receivables and related assets in consideration for a combination of cash, equity in the A/R Parent SPE and/or letters of credit issued by the A/R LC Bank to the A/R Originators; and (iii) the A/R Parent SPE sold or contributed to the Borrower certain receivables and related assets in consideration for a combination of cash, equity in the A/R Borrower and/or letters of credit issued by the LC Bank to the beneficiaries elected by A/R Parent SPE.

The Company used the proceeds of the initial borrowings under the A/R Facility to repay outstanding revolving borrowings under the Company’s senior credit facility and to provide additional liquidity and funding for the ongoing business needs of the Company and its subsidiaries.

The A/R Borrower and A/R Parent SPE were formed in December 2019, and are identified as variable interest entities (“VIEs”) and consolidated into the Company’s financial statements following variable interest entities (“VIE”) consolidation model under ASC 810. The A/R Borrower and A/R Parent SPE are bankruptcy remote entities and as such their assets are not available to creditors of the Company or any of its subsidiaries. Since January 10, 2020, the parties amended and waived the A/R Facility several times to address contractually, the occurrence of certain events, including among other things, the delay in delivery of annual financial statements for the fiscal year ended 2019, financial statements for the quarter ended March 31, 2020, and the Initial Servicer’s Liquidity (as defined in the A/R Facility) falling below \$60.0 million. In connection with these amendments a forbearance fee of \$4.8 million was due and added to the outstanding principal balance of the loans. The Company concluded that the amendment represented modification of debt under ASC 470-50. Accordingly, the forbearance fee paid was added to unamortized debt issuance cost and amortized ratably over the remaining term of the A/R facility.

Each loan under the A/R Facility originally bore interest on the unpaid principal amount as follows: (1) if a Base Rate Loan, at 3.75% plus a rate equal to the greater of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50%, (c) the Adjusted LIBOR Rate (calculated based upon an Interest Period of one month and determined on a daily basis) plus 1.00%, and (d) 4.50% per annum and (2) if a LIBOR Rate Loan, 4.75% plus a floating LIBOR Rate with a 1.00% LIBOR floor. In connection with the above described amendments to the A/R Facility, the applicable margin of the Base Rate Loans was increased to 5.75% and the LIBOR Rate Loans was increased to 6.75%.

On December 17, 2020, the Company repaid in full the loans outstanding under the A/R Facility. The aggregate outstanding principal amount of loans under the A/R Facility as of such date was approximately \$83.0 million. The early termination of the A/R Facility triggered an early termination fee of \$0.8 million and required repayment of approximately \$0.5 million in respect of principal, accrued interest and fees. All obligations under the A/R Facility (other than contingent indemnification obligations that expressly survive termination) terminated upon repayment. The A/R Facility was replaced by the Securitization Facility as described below. Repayment of A/R Facility was treated as an extinguishment of debt under ASC 470-50. Accordingly, the Company wrote off the unamortized balance of \$8.2 million of debt issuance costs related to A/R facility. These early termination charges and unamortized balance of the debt issuance cost written off during the year ended December 31, 2020 are reported within Debt modification and extinguishment costs (gain), net within our consolidated statements of operations.

On December 17, 2020, certain subsidiaries of Company closed on the \$145.0 million Securitization Facility with a five year term. Borrowings under the Securitization Facility are subject to an improved borrowing base definition

over the A/R Facility that consists of receivables and, subject to contribution, further supported by inventory and intellectual property, in each case, subject to certain eligibility criteria, concentration limits and reserves.

The Securitization Facility provided for an initial funding of approximately \$92.0 million supported by the receivables portion of the borrowing base and, subject to contribution, a further funding of approximately \$53.0 million supported by inventory and intellectual property. On December 17, 2020, Exela Receivables 3, LLC (the “Securitization Borrower”) made the initial borrowing of approximately \$92.0 million under the Securitization Facility and used a portion of the proceeds to repay the A/R Facility and used the remaining proceeds for general corporate purposes. On April 11, 2021, the Company amended the Securitization Loan Agreement and agreed to, among other things, extend the option to access further funding of approximately \$53.0 million in additional borrowings from April 10, 2021 to September 30, 2021 upon the contribution of inventory and intellectual property to support the borrowing base.

The initial documentation for the Securitization Facility includes (i) a Loan and Security Agreement (the “Securitization Loan Agreement”), dated as of December 10, 2020, by and among the Securitization Borrower, a wholly-owned indirect subsidiary of the Company, the lenders (each, a “Securitization Lender” and collectively the “Securitization Lenders”), Alter Domus (US), LLC, as administrative agent (the “Securitization Administrative Agent”) and the Company, as initial servicer, pursuant to which the Securitization Lenders will make loans to the Securitization Borrower to be used to purchase receivables and related assets from the Securitization Parent SPE (as defined below), (ii) a First Tier Receivables Purchase and Sale Agreement (the, dated as of December 17, 2020, by and among Exela Receivables 3 Holdco, LLC (the “Securitization Parent SPE”), a wholly-owned indirect subsidiary of the Company, and certain other indirect, wholly-owned subsidiaries of the Company listed therein (collectively, the “Securitization Originators”), and the Company, as initial servicer, pursuant to which each Securitization Originator has sold or contributed and will sell or contribute to the Securitization Parent SPE certain receivables and related assets in consideration for a combination of cash and equity in the Securitization Parent SPE, (iii) a Second Tier Receivables Purchase and Sale Agreement, dated as of December 17, 2020, by and among, the Securitization Borrower, the Securitization Parent SPE and the Company, as initial servicer, pursuant to which Securitization Parent SPE has sold or contributed and will sell or contribute to the Securitization Borrower certain receivables and related assets in consideration for a combination of cash and equity in the Securitization Borrower, (iv) the Sub-Servicing Agreement, dated as of December 17, 2020, by and among the Company and each Securitization Originator, (v) the Pledge and Guaranty, dated as of the December 10, 2020, between the Securitization Parent SPE and the Administrative Agent, and (vi) the Performance Guaranty, dated as of December 17, 2020, between the Company, as performance guarantor, and the Securitization Administrative Agent (and together with all other certificates, instruments, UCC financing statements, reports, notices, agreements and documents executed or delivered in connection with the Securitization Loan Agreement, the “Securitization Agreements”).

The Securitization Borrower, the Company, the Securitization Parent SPE and the Securitization Originators provide customary representations and covenants under the Securitization Agreements. The Securitization Loan Agreement provides for certain events of default upon the occurrence of which the Securitization Administrative Agent may declare the facility’s termination date to have occurred and declare the outstanding Securitization Loan and all other obligations of the Securitization Borrower to be immediately due and payable, however the Securitization Facility does not include an ongoing liquidity covenant like the A/R Facility and aligns reporting obligations with the Company’s other material indebtedness agreements.

The Securitization Borrower and Securitization Parent SPE were formed in December 2020, and are identified as VIEs and consolidated into the Company’s financial statements following VIE consolidation model under ASC 810. The Securitization Borrower and Securitization Parent SPE are bankruptcy remote entities and as such their assets are not available to creditors of the Company or any of its subsidiaries. Each loan under the Securitization Facility bears interest on the unpaid principal amount as follows: (i) if a Base Rate Loan, at a rate per annum equal to (x) the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the Adjusted LIBOR Rate (as defined in the Securitization Loan Agreement) plus 1.00%, plus (y) 8.75%; or (ii) if a LIBOR Rate Loan, at the Adjusted LIBOR Rate plus 9.75%. As of December 31, 2021, there were borrowings of \$91.9 million outstanding under the Securitization Facility. As of December 31, 2021, the Company was in compliance with all covenants required under the Securitization Facility.

**Long-Term Debt Outstanding**

As of December 31, 2021 and 2020, the following long-term debt instruments were outstanding:

	December 31, 2021	December 31, 2020
Other (a)	\$ 29,296	37,653
Term loan under first lien credit agreement (b)	89,585	343,597
Senior secured 2023 notes (c)	22,616	984,216
Senior secured 2026 notes (d)	801,306	—
Secured borrowings under BRCC Facility	115,000	—
Secured borrowings under Securitization Facility	91,947	91,947
Revolver	99,477	80,543
Total debt	<u>1,249,227</u>	<u>1,537,956</u>
Less: Current portion of long-term debt	<u>(144,828)</u>	<u>(39,952)</u>
Long-term debt, net of current maturities	<u>\$ 1,104,399</u>	<u>\$ 1,498,004</u>

- (a) Other debt represents outstanding loan balances associated with various hardware, software purchases, maintenance and leasehold improvements along with loans and receivables factoring arrangement entered into by subsidiaries of the Company.
- (b) Net of unamortized original issue discount and debt issuance costs of \$0.8 million and \$2.8 million as of December 31, 2021 and \$4.8 million and \$17.1 million as of December 31, 2020.
- (c) Net of unamortized original issue discount and debt issuance costs of \$0.2 million and \$0.1 million as of December 31, 2021 and \$11.3 million and \$4.5 million as of December 31, 2020.
- (d) Net of unamortized debt exchange premium and carried forward debt issuance costs of \$15.4 million and \$9.0 million as of December 31, 2021.

As of December 31, 2021, maturities of long-term debt are as follows:

	<b>Maturity</b>
2022	\$ 144,828
2023	211,988
2024	3,005
2025	91,947
2026	794,952
Thereafter	—
Total long-term debt	<u>1,246,720</u>
Less: Unamortized discount and debt issuance costs	<u>2,507</u>
	<u>\$ 1,249,227</u>

**12. Income Taxes**

The Company provides for income taxes using an asset and liability approach, under which deferred income taxes are provided for based upon enacted tax laws and rates applicable to periods in which the taxes become payable.

For financial reporting purposes, income/ (loss) before income taxes includes the following components:

	Year Ended December 31,		
	2021	2020	2019
United States	\$ (135,299)	\$ (158,186)	\$ (511,165)
Foreign	4,565	(6,760)	9,691
	<u>\$ (130,734)</u>	<u>\$ (164,946)</u>	<u>\$ (501,474)</u>

The provision for federal, state, and foreign income taxes consists of the following:

	Year Ended December 31,		
	2021	2020	2019
<b>Federal</b>			
Current	\$ —	\$ —	\$ (1,308)
Deferred	5	480	(3,879)
<b>State</b>			
Current	1,232	1,325	2,255
Deferred	351	1,542	(807)
<b>Foreign</b>			
Current	3,775	4,318	5,770
Deferred	6,293	5,919	5,611
<b>Income Tax Expense</b>	<u>\$ 11,656</u>	<u>\$ 13,584</u>	<u>\$ 7,642</u>

The differences between income taxes expected by applying the U.S. federal statutory tax rate of 21% and the amount of income taxes provided for are as follows:

	Year Ended December 31,		
	2021	2020	2019
Tax at statutory rate	\$ (27,454)	\$ (34,639)	\$ (105,310)
<b>Add (deduct)</b>			
State income taxes	(1,626)	(5,234)	(7,666)
Foreign income taxes	1,567	(516)	4,390
Nondeductible goodwill impairment	—	—	61,699
Cancellation of debt income	(6,429)	—	—
Permanent differences	359	218	1,275
Litigation settlement	2	71	3,310
Changes in valuation allowance	11,857	53,115	30,064
Unremitted earnings	1,072	(275)	1,604
GILTI Inclusion	—	(4,996)	3,772
Expiration and reduction of tax attributes	31,014	4,944	10,807
Other	1,294	896	3,697
<b>Income Tax Expense</b>	<u>\$ 11,656</u>	<u>\$ 13,584</u>	<u>\$ 7,642</u>

The Tax Cuts and Jobs Act (“TCJA”) was signed by the President of the United States and enacted into law on December 22, 2017. This overhaul of the U.S. tax law made a number of substantial changes, including the reduction of the corporate tax rate from 35% to 21%, establishing a dividends received deduction for dividends paid by foreign subsidiaries to the U.S., elimination or limitation of certain deductions (interest, domestic production activities and executive compensation), imposing a mandatory tax on previously unrepatriated earnings accumulated offshore since 1986 and establishing global minimum income tax and base erosion tax provisions related to offshore activities and affiliated party payments.

The TCJA subjects a U.S. shareholder to tax on Global Intangible Low-taxed Income (“GILTI”) earned by certain foreign subsidiaries. The FASB Staff Q&A, Topic 740, No. 5, Accounting for GILTI, states that an entity can make an accounting policy election to either recognize deferred taxes for temporary basis differences expected to reverse

as GILTI in future years or provide for the tax expense related to GILTI in the year the tax is incurred as a period expense only. The Company has elected the accounting policy to recognize the tax expense related to GILTI in the year the tax is incurred as a period expense. At December 31, 2021, the Company has no GILTI inclusion related to current-year operations.

On July 20, 2020, the U.S. Treasury and the Internal Revenue Service issued Final Regulations which will allow an annual election to exclude from the U.S. tax return certain GILTI amounts when the taxes paid by a foreign affiliate exceed 18.9% (90% of U.S. statutory rate of 21%) of the GILTI amount for that foreign affiliate (the “high-tax exception”). These regulations are effective for the 2021 taxable year with an election to apply to any taxable year beginning after 2017. In many of the countries in which the Company operates there are differences between local tax rules used to determine the tax base and the U.S. tax principles used to determine GILTI. Therefore, while many of the countries have a statutory tax rate above the 18.9% threshold, separate affiliates may not meet the 18.9% threshold each year and, as such, may not qualify for this exclusion. The Company plans to make the high-tax exception election for the 2021 tax year resulting in no GILTI inclusion for the 2021 tax year. Additionally, the Company made the high-tax exception election for 2020 and 2019 on its 2020 and 2019 tax returns and plans to make the election for 2018 by filing an amended tax return. The 2018 return once amended is expected to result in an estimated income tax benefit of \$5.0 million recorded in 2020.

Beginning in 2018, the TCJA also subjects a U.S. shareholder of a controlled foreign corporation to current tax on certain payments from corporations subject to U.S. tax to related foreign persons, also referred to as base erosion and anti-abuse tax (“BEAT”). The BEAT provisions in the Tax Reform Act eliminates the deduction of certain base-erosion payments made to related foreign corporations and impose a minimum tax if greater than regular tax. The Company has recorded no tax liability related to BEAT for the years ended December 31, 2021 and 2020.

On March 27, 2020, Congress enacted the Coronavirus Aid Relief and Economic Security Act (“CARES Act”), in response to the COVID-19 pandemic. The CARES Act contain numerous income tax provisions, including refundable payroll tax credits, 100% utilization of net operating loss (NOL) for taxable income in 2018, 2019 and 2020, 5 years NOL carryback from 2018, 2019 and 2020, interest limitation increase to 50% adjusted taxable income from 30% for tax years beginning January 1, 2019 and 2020, and immediate deduction on qualified improvement costs instead of depreciating them over 39 years. The Company has benefited from the increase of 50% adjusted taxable income limitation on net interest expense deduction, as well as the refundable payroll tax credit for the year ended December 31, 2020.



The components of deferred income tax liabilities and assets are as follows:

	<b>Year Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Deferred income tax liabilities:</b>		
Book over tax basis of intangible assets and fixed assets	\$ (55,449)	\$ (65,724)
Unremitted foreign earnings	(7,135)	(6,063)
Operating lease and finance lease right-of-use assets	(9,573)	(11,597)
Other, net	<u>\$ (1,584)</u>	<u>\$ (2,604)</u>
Total deferred income tax liabilities	(73,741)	(85,988)
<b>Deferred income tax assets:</b>		
Allowance for doubtful accounts and receivable adjustments	\$ 1,816	\$ 1,704
Inventory	2,362	1,677
Accrued liabilities	12,606	15,345
Net operating loss and tax credit carryforwards	141,946	171,148
Tax deductible goodwill	4,424	6,171
Disallowed interest deduction	106,449	74,672
Operating lease and finance lease liabilities	10,211	13,004
Other, net	18,197	19,334
Total deferred income tax assets	<u>\$ 298,011</u>	<u>\$ 303,055</u>
Valuation allowance	<u>(233,755)</u>	<u>(220,030)</u>
<b>Total net deferred income tax assets (liabilities)</b>	<b><u>\$ (9,485)</u></b>	<b><u>\$ (2,963)</u></b>

Gross deferred tax assets are reduced by valuation allowances to the extent the Company determines it is not more-likely-than-not that the deferred tax assets are expected to be realized. At December 31, 2021, the Company recognized \$233.8 million of valuation allowances against gross deferred tax assets primarily related to net operating loss and tax credit carryforwards. Of this amount, approximately \$60.4 million and \$4.7 million of the total valuation allowance relates to U.S. federal and state limitations, respectively, on the utilization of net operating loss carryforwards due to numerous changes in ownership. Approximately \$89.0 million and \$12.2 million of the total valuation allowance relates to U.S. federal disallowed interest deductions and state disallowed interest deductions, respectively, pursuant to the TCJA. The remaining \$67.5 million of the valuation allowance relates to non-limited U.S. and non-U.S. net operating losses, capital losses, and tax credits that are not expected to be realizable.

The net change during the year in the total valuation allowance was an increase of \$13.7 million primarily related to the increase of net regular deferred tax assets and increase of deferred tax assets related to disallowed interest deduction.

Section 382 of the Code, limits the amount of U.S. tax attributes (net operating losses and tax credit carryforwards) following a change in ownership. The Company has determined that for the purpose of these provisions an ownership change occurred under Section 382 on April 3, 2014 and October 31, 2014 for BancTec, Inc. and its subsidiaries and RC4Capital, LLC and its subsidiaries (collectively, the "Pangea Group") and on October 31, 2014 for the historic SourceHOV group (the "2014 Reorganization"). The Section 382 limitations significantly limit the pre-acquisition Pangea Group net operating losses. Accordingly, upon the October 31, 2014 change in control, most of the historic Pangea Group federal net operating losses were limited and a valuation allowance has been established against the related deferred tax assets. With regard to Pangea Group's foreign subsidiaries, it was determined that most deferred tax assets are not likely to be realized and valuation allowances have been established. The Section 382 limit that applied to the historic SourceHOV group is greater than the net operating losses and tax credits generated in the predecessor periods. For the year ended December 31, 2021, the Company determined an ownership change occurred on March 15, 2021 and another successive ownership change occurred on December 8, 2021. The Company can increase its annual Section 382 limitation for the amount of recognized built-in gain ("RBIG") pursuant to the application of Notice 2003-65. The Company determined the annual Section 382 limitation should enable the Company to utilize all its NOL and



credit carryforwards, therefore, no additional valuation allowances were established relating to Section 382 limitations other than the pre-2014 Section 382 limitations that applied.

Under the debt buy-back program and debt exchange transaction a substantial amount of the Company's debt was extinguished. Absent an exception, a debtor recognizes cancellation of debt income ("CODI") upon discharge of its outstanding indebtedness for an amount of consideration that is less than the outstanding debt. The Internal Revenue Code of 1986, as amended, (the Code), provides that a debtor may exclude CODI from taxable income but must reduce certain of its tax attributes by the amount of CODI. For the year ended December 31, 2021 the Company excluded \$147.1 million of CODI from taxable income and reduced the gross U.S. federal net operating loss by the corresponding amount.

Included in deferred tax assets are federal, foreign and state net operating loss carryforwards, federal capital loss carryforwards, federal general business credit carryforwards and state tax credit carryforwards due to expire beginning in 2022 through 2041. As of December 31, 2021, the Company has federal and state income tax net operating loss (NOL) carryforwards of \$459.2 million and \$377.2 million, respectively, which will expire at various dates from 2022 through 2041. Such NOL carryforwards expire as follows:

	<b>Federal NOL</b>	<b>State and Local NOL</b>
2022 – 2026	\$ 118,277	\$ 68,462
2027 – 2031	134,410	100,595
2032 – 2038	<u>206,502</u>	<u>208,164</u>
	<u>\$ 459,189</u>	<u>\$ 377,221</u>

As of December 31, 2021, the Company has foreign net operating loss carryforwards of \$76.6 million, \$0.6 million of which were generated by Exela's Polish subsidiary, \$0.7 million were generated in Hungary and Serbia, \$2.3 million is generated in the Netherlands, \$1.0 million is generated in Finland, and will expire in 2024, 2026, 2027 and 2031 respectively. The remainder of the foreign net operating losses will be carried forward indefinitely.

The Company adopted the provision of accounting for uncertainty in income taxes in ASC Topic 740. ASC 740 clarifies the accounting for uncertain tax positions in the Company's financial statements and prescribes a recognition threshold and measurement attribute for financial statement disclosure of tax positions taken or expected to be taken on tax returns. The total amount of unrecognized tax benefits, exclusive of interest and penalties, is \$2.1 million, \$1.8 million and \$4.3 million at December 31, 2021, 2020 and 2019, respectively. Included in the balance of unrecognized tax benefits as of December 31, 2021, 2020 and 2019 are \$0.8 million, \$0.7 million and \$0.7 million, respectively, of tax benefits that, if recognized would benefit the effective tax rate. Total accrued interest and penalties recorded on the Consolidated Balance Sheet were \$2.4 million, \$2.1 million and \$2.1 million at December 31, 2021, 2020 and 2019, respectively. The total amount of interest and penalties recognized in the consolidated statement of operations during the years ended December 31, 2021, 2020 and 2019 was \$(0.3) million, \$(0.0) million and \$(0.2) million, respectively.

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits:

	<b>Year Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
<b>Unrecognized tax benefits—January 1</b>	<b>\$ 1,836</b>	<b>\$ 4,314</b>	<b>\$ 1,476</b>
Gross increases—tax positions in prior period	—	(21)	1,378
Gross decreases—tax positions in prior period	(129)	(2,608)	(10)
Gross increases—tax positions in current period	460	151	1,470
Settlement	(90)	—	—
<b>Unrecognized tax benefits—December 31</b>	<b><u>\$ 2,077</u></b>	<b><u>\$ 1,836</u></b>	<b><u>\$ 4,314</u></b>

The Company files income tax returns in the U.S. and various state and foreign jurisdictions. The statute of limitations for U.S. purposes is open for tax years ending on or after December 31, 2016. However, NOLs generated in years prior to 2016 and utilized in future periods may be subject to examination by U.S. tax authorities. State

jurisdictions that remain subject to examination are not considered significant. The Company has significant foreign operations in India and EMEA. The Company may be subject to examination by the India tax authorities for tax periods ending on or after March 31, 2014.

At December 31, 2021, the Company maintains its prior indefinite reinvestment assertion on undistributed earnings related to certain foreign subsidiaries. Accordingly, no deferred taxes have been provided for withholding taxes or other taxes that would result upon repatriation of approximately \$132.9 million of undistributed earnings from these foreign subsidiaries as those earnings continue to be permanently reinvested. However, the Company does not indefinitely reinvest earnings in Canada, China, India, Mexico and Philippines. The Company recorded \$7.1 million and \$6.0 million of foreign withholding taxes on the undistributed earnings of these jurisdictions at December 31, 2021 and 2020, respectively. The Company recorded \$1.1 million of deferred expense, \$0.3 million of deferred benefit, and \$1.6 million of deferred expense in the consolidated statement of operations during the years ended December 31, 2021, 2020 and 2019, respectively. The foreign withholding taxes deferred expense recorded in the current year is attributable to the current year undistributed earnings.

### **13. Employee Benefit Plans**

#### **German Pension Plan**

The Company's subsidiary in Germany provides pension benefits to certain retirees. Employees eligible for participation include all employees who started working for the Company or its predecessors prior to September 30, 1987 and have finished a qualifying period of at least 10 years. The Company accrues the cost of these benefits over the service lives of the covered employees based on an actuarial calculation. The Company uses a December 31 measurement date for this plan. The German pension plan is an unfunded plan and therefore has no plan assets. No new employees are registered under this plan and the participants who are already eligible to receive benefits under this plan are no longer employees of the Company.

#### **U.K. Pension Plan**

The Company's subsidiary in the United Kingdom provides pension benefits to certain retirees and eligible dependents. Employees eligible for participation included all full-time regular employees who were more than three years from retirement prior to October 2001. A retirement pension or a lump-sum payment may be paid dependent upon length of service at the mandatory retirement age. The Company accrues the cost of these benefits over the service lives of the covered employees based on an actuarial calculation. The Company uses a December 31 measurement date for this plan. No new employees are registered under this plan and the pension obligation for the existing participants of the plan is calculated based on actual salary of the participants as at the earlier of two dates, the participants leaving the Company or December 31, 2015.

The expected rate of return assumptions for plan assets relate solely to the UK plan and are based mainly on historical performance achieved over a long period of time (15 to 20 years) encompassing many business and economic cycles. The Company assumed a weighted average expected long-term rate on plan assets of 2.72%.

#### **Norway Pension Plan**

The Company's subsidiary in Norway provides pension benefits to eligible retirees and eligible dependents. Employees eligible for participation include all employees who were more than three years from retirement prior to March 2018. The Company accrues the cost of these benefits over the service lives of the covered employees based on an actuarial calculation. The Company uses a December 31 measurement date for this plan. No new employees are registered under this plan and the pension obligation for the existing participants of the plan is calculated based on actual salary of the participants as at the later of two dates, the participants leaving the Company or April 30, 2018.

## Asterion Pension Plan

The Company acquired in 2018 through the Asterion Business Combination the obligation to provide pension benefits to eligible retirees and eligible dependents. Employees eligible for participation included all full-time regular employees who were more than three years from retirement prior to July 2003. A retirement pension or a lump-sum payment may be paid dependent upon length of service at the mandatory retirement age. The Company accrues the cost of these benefits over the service lives of the covered employees based on an actuarial calculation. The Company uses a December 31 measurement date for this plan. No new employees are registered under this plan and the pension obligation for the existing participants of the plan is calculated based on actual salary of the participants as at the earlier of two dates, the participants leaving the Company or April 10, 2018.

## Funded Status

The change in benefit obligations, the change in the fair value of the plan assets and the funded status of the Company's pension plans (except for the German pension plan which is unfunded) and the amounts recognized in the Company's consolidated financial statements are as follows:

	<b>Year ended December,</b>	
	<b>2021</b>	<b>2020</b>
<b>Change in Benefit Obligation:</b>		
Benefit obligation at beginning of period	\$ 122,011	\$ 100,961
Service cost	68	69
Interest cost	1,686	1,984
Actuarial loss (gain)	(2,296)	18,861
Plan amendments	(28)	(10)
Plan curtailment	98	—
Benefits paid	(2,497)	(4,745)
Foreign-exchange rate changes	(1,570)	4,891
Benefit obligation at end of year	<u>\$ 117,472</u>	<u>\$ 122,011</u>
<b>Change in Plan Assets:</b>		
Fair value of plan assets at beginning of period	\$ 87,215	\$ 75,875
Actual return on plan assets	2,950	10,755
Employer contributions	3,189	2,052
Plan participants' contributions	16	—
Benefits paid	(2,393)	(4,651)
Foreign-exchange rate changes	(1,005)	3,184
Fair value of plan assets at end of year	<u>89,972</u>	<u>87,215</u>
Funded status at end of year	<u>\$ (27,500)</u>	<u>\$ (34,796)</u>
<b>Net amount recognized in the Consolidated Balance Sheets:</b>		
Pension liability, net (a)	\$ (28,383)	\$ (35,515)
<b>Amounts recognized in accumulated other comprehensive loss, net of tax consist of:</b>		
Net actuarial loss	(10,946)	(17,064)
Net amount recognized in accumulated other comprehensive loss, net of tax	<u>\$ (10,946)</u>	<u>\$ (17,064)</u>
<b>Plans with underfunded or non-funded accumulated benefit obligation:</b>		
Aggregate projected benefit obligation	\$ 117,472	\$ 122,010
Aggregate accumulated benefit obligation	\$ 117,472	\$ 122,010
Aggregate fair value of plan assets	\$ 89,972	\$ 87,215

- (a) Consolidated balance of \$28.4 million as of December 31, 2021 includes pension liabilities of \$23.0 million, \$2.5 million, \$2.1 million and less than \$0.1 million under U.K., Asterion, German and Norway pension plans, respectively, and minimum regulatory benefit for a Philippines legal entity of \$0.7 million. Consolidated balance of

\$35.5 million as of December 31, 2020 includes pension liabilities of \$29.7 million, \$2.7 million, \$2.4 million and less than \$0.1 million under U.K., Asterion, German and Norway pension plans, respectively, and minimum regulatory benefit for a Philippines legal entity of \$0.6 million.

#### Tax Effect on Accumulated Other Comprehensive Loss

As of December 31, 2021 and 2020, the Company recorded actuarial losses of \$10.9 million and \$17.1 million, respectively, which is net of a deferred tax benefit of \$2.0 million for each period.

#### Pension and Postretirement Expense

The components of the net periodic benefit cost are as follows:

	Year ended December 31,		
	2021	2020	2019
Service cost	\$ 68	\$ 74	\$ 80
Interest cost	1,686	1,984	2,448
Expected return on plan assets	(2,410)	(2,530)	(2,460)
Amortization:			
Amortization of prior service cost	224	150	(169)
Amortization of net loss	3,340	1,739	1,768
Settlement loss	—	552	—
Net periodic benefit cost	<u>\$ 2,908</u>	<u>\$ 1,969</u>	<u>\$ 1,667</u>

#### Valuation

The Company uses the corridor approach and projected unit credit method in the valuation of its defined benefit plans for the UK, Germany, and Norway respectively. The corridor approach defers all actuarial gains and losses resulting from variances between actual results and economic estimates or actuarial assumptions. For defined benefit pension plans, these unrecognized gains and losses are amortized when the net gains and losses exceed 10% of the greater of the market-related value of plan assets or the projected benefit obligation at the beginning of the year. The amount in excess of the corridor is amortized over 15 years. Similarly, the Company used the Projected Unit Credit Method for the German Plan, and evaluated the assumptions used to derive the related benefit obligations consisting primarily of financial and demographic assumptions including commencement of employment, biometric decrement tables, retirement age, staff turnover. The projected unit credit method determines the present value of the Company's defined benefit obligations and related service costs by taking into account each period of service as giving rise to an additional unit of benefit entitlement and measures each unit separately in building up the final obligation. Benefit is attributed to periods of service using the plan's benefit formula, unless an employee's service in later years will lead to a materially higher of benefit than in earlier years, in which case a straight-line basis is used.

The following tables set forth the principal actuarial assumptions used to determine benefit obligation and net periodic benefit costs:

	December 31,							
	2021	2020	2021	2020	2021	2020	2021	2020
	UK		Germany		Norway		Asterion	
Weighted-average assumptions used to determine benefit obligations:								
Discount rate	1.80 %	1.40 %	1.00 %	0.75 %	1.90 %	1.70 %	1.13 %	0.79
Rate of compensation increase	N/A	N/A	N/A	N/A	2.75 %	2.25 %	N/A %	N/A
Weighted-average assumptions used to determine net periodic benefit cost:								
Discount rate	1.40 %	2.10 %	1.00 %	0.75 %	1.90 %	1.70 %	1.13 %	0.79
Expected asset return	2.72 %	3.47 %	N/A %	N/A %	3.10 %	2.70 %	1.13 %	0.79
Rate of compensation increase	N/A	N/A	N/A	N/A	2.75 %	2.25 %	N/A %	N/A

The Germany plan is an unfunded plan and therefore has no plan assets. The expected rate of return assumptions for plan assets are based mainly on historical performance achieved over a long period of time (10 to 20 years) encompassing many business and economic cycles. Adjustments, upward and downward, may be made to those historical returns to reflect future capital market expectations; these expectations are typically derived from expert advice from the investment community and surveys of peer company assumptions.

The Company assumed a weighted average expected long-term rate of return on plan assets for the overall scheme of 2.73%. The Company's long-term expected rate of return on cash is determined by reference to UK government 10 year bond yields at the balance sheet dates. The long-term expected return on bonds is determined by reference to corporate bond yields at the balance sheet date. The long-term expected rate of return on equities and diversified growth funds is based on the rate of return on UK long dated government bonds with an allowance for out-performance. The long-term expected rate of return on the liability driven investments holdings is determined by reference to UK government 20 year bond yields at the balance sheet date.

The discount rate assumption was developed considering the current yield on an investment grade non-gilt index with an adjustment to the yield to match the average duration of the index with the average duration of the plan's liabilities. The index utilized reflected the market's yield requirements for these types of investments.

The inflation rate assumption was developed considering the difference in yields between a long-term government stocks index and a long-term index-linked stocks index. This difference was modified to consider the depression of the yield on index-linked stocks due to the shortage of supply and high demand, the premium for inflation above the expectation built into the yield on fixed-interest stocks and the government's target rate for inflation (CPI) at 2.4%. The assumptions used are the best estimates chosen from a range of possible actuarial assumptions which, due to the time scale covered, may not necessarily be borne out in practice.

### Plan Assets

The investment objective for the plan is to earn, over moving fifteen to twenty year periods, the long-term expected rate of return, net of investment fees and transaction costs, to satisfy the benefit obligations of the plan, while at the same time maintaining sufficient liquidity to pay benefit obligations and proper expenses, and meet any other cash needs, in the short-to medium-term.

The Company's investment policy related to the defined benefit plan is to continue to maintain investments in government gilts and highly rated bonds as a means to reduce the overall risk of assets held in the fund. No specific

targeted allocation percentages have been set by category, but are set at the direction and discretion of the plan trustees. The weighted average allocation of plan assets by asset category is as follows:

	December 31,		
	2021	2020	2019
U.K. and other international equities	32.8 %	31.4 %	29.9 %
U.K. government and corporate bonds	2.5	2.7	12.5
Diversified growth fund	25.7	21.0	41.3
Liability driven investments	34.6	40.6	16.3
Multi-asset credit fund	4.4	4.3	—
Total	<u>100.0 %</u>	<u>100.0 %</u>	<u>100.0 %</u>

The following tables set forth, by category and within the fair value hierarchy, the fair value of the Company's pension assets at December 31, 2021 and 2020:

Asset Category:	December 31, 2021			
	Total	Level 1	Level 2	Level 3
Cash	\$ 149	\$ 149	\$ —	\$ —
Equity funds:				
U.K.	17,423	—	17,423	—
Other international	11,909	—	11,909	—
Fixed income securities:				
Corporate bonds / U.K. Gilts	2,292	—	2,292	—
Other investments:				
Diversified growth fund	23,122	—	23,122	—
Liability driven investments	31,158	—	31,158	—
Multi-asset credit fund	3,919	—	3,919	—
Total fair value	<u>\$ 89,972</u>	<u>\$ 149</u>	<u>\$ 89,823</u>	<u>\$ —</u>

Asset Category:	December 31, 2020			
	Total	Level 1	Level 2	Level 3
Cash	\$ 430	\$ 430	\$ —	\$ —
Equity funds:				
U.K.	16,201	—	16,201	—
Other international	10,802	—	10,802	—
Fixed income securities:				
Corporate bonds / U.K. Gilts	2,353	—	2,353	—
Other investments:				
Diversified growth fund	18,313	—	18,313	—
Liability driven investments	35,403	—	35,403	—
Multi-asset credit fund	3,713	—	3,713	—
Total fair value	<u>\$ 87,215</u>	<u>\$ 430</u>	<u>\$ 86,785</u>	<u>\$ —</u>

The plan assets are categorized as follows, as applicable:

Level 1: Any asset for which a unit price is available and used without adjustment, cash balances, etc.

Level 2: Any asset for which the amount disclosed is based on market data, for example a fair value measurement based on a present value technique (where all calculation inputs are based on data).

Level 3: Other assets. For example, any asset value with a fair value adjustment made not based on available indices or data.

## Employer Contributions

The Company's funding is based on governmental requirements and differs from those methods used to recognize pension expense. The Company made contributions of \$3.2 million and \$2.1 million to its pension plans during the years ended December 31, 2021 and 2020, respectively. The Company has fully funded the pension plans for 2021 based on current plan provisions. The Company expects to contribute \$2.6 million to the pension plans during 2022, based on current plan provisions.

## Estimated Future Benefit Payments

The estimated future pension benefit payments expected to be paid to plan participants are as follows:

<b>Year ended December 31,</b>	<b>Estimated Benefit Payments</b>
2022	\$ 2,120
2023	2,069
2024	2,878
2025	2,959
2026	3,071
2027 – 2031	18,999
Total	<u>\$ 32,096</u>

## 14. Commitments and Contingencies

### Litigation

The Company is, from time to time, involved in certain legal proceedings, inquiries, claims and disputes, which arise in the ordinary course of business. Although management cannot predict the outcomes of these matters, management does not believe these actions will have a material, adverse effect on the Company's consolidated balance sheets, consolidated statements of operations or consolidated statements of cash flows.

### Appraisal Action

On September 21, 2017, former stockholders of SourceHOV Holdings, Inc. ("SourceHOV"), who owned 10,304 shares of SourceHOV common stock, filed a petition for appraisal pursuant to 8 Del. C. § 262 in the Delaware Court of Chancery (the "Court"), captioned Manichaeon Capital, LLC, et al. v. SourceHOV Holdings, Inc., C.A. No. 2017 0673 JRS (the "Appraisal Action"). The Appraisal Action arose out of a preliminary transaction in connection with the acquisition of SourceHOV and Novitex Holdings, Inc., by Quinpario in July 2017 ("Novitex Business Combination"), and the petitioners sought, among other things, a determination of the fair value of their SourceHOV shares at the time of the Novitex Business Combination; an order that SourceHOV pay that value to the petitioners, together with interest at the statutory rate; and an award of costs, attorneys' fees, and other expenses. During the trial the parties and their experts offered competing valuations of the SourceHOV shares as of the date of the Novitex Business Combination. SourceHOV argued the value was no more than \$1,633.85 per share and the petitioners argued the value was at least \$5,079.28 per share. On January 30, 2020, the Court issued its post-trial Memorandum Opinion in the Appraisal Action, in which it found that the fair value of SourceHOV as of the date of the Novitex Business Combination was \$4,591 per share, and on March 26, 2020, the Court issued its final order awarding the petitioners \$57,698,426 inclusive of costs and interest. Per the Court's opinion, the legal rate of interest, compounded quarterly, accrues on the per share value from the July 2017 closing date of the Novitex Business Combination until the date of payment to petitioners.

On December 31 2021, we agreed to settle the Appraisal Action along with a separate case brought by the same plaintiffs for \$63.4 million. Accordingly, as of December 31, 2021, the Company accrued a liability of \$63.4 million for

these matters, all of which is expected to be paid during the first half of 2022 (\$40 million having already been paid as of March 16, 2022).

As a result of the Appraisal Action and following repayment of the Margin Loan (as defined below) by Ex-Sigma 2, 1,523,578 shares of our Common Stock issued to Ex-Sigma 2 (the “Ex-Sigma 2”), our largest shareholder following the Novitex Business Combination, were returned to the Company during the first quarter of 2020.

### **Adverse Arbitration Order**

In April 2020, one of the Company's Nordic subsidiaries commenced an arbitration in Finland against a customer alleging breach of contract and other damages in connection with an outsourcing services agreement and transition services agreement executed in 2017. In September 2020, the customer submitted counterclaims against the Company in an aggregate amount in excess of €10.0 million. Following an expedited arbitration, in late November 2020, the arbitrator awarded the customer approximately \$13.0 million in the aggregate for the counterclaimed damages and costs. The Company filed an application to annul the award in late January 2021 with the relevant court asserting, among other bases, that the arbitrator violated due process and procedural rules by disallowing the Company's witness and expert testimony and maintaining the expedited format following the assertion of significant counterclaims which would ordinarily have required the application of normal rather than expedited rules. On May 28, 2021, the parties entered into a settlement agreement resolving this dispute for a total of \$8.8 million including the reimbursement of certain third party charges. The Company had accrued a liability balance of \$9.7 million for this matter as of the settlement date. Accordingly, on settlement the Company reversed the additional \$0.9 million accrued for the matter. As of December 31, 2021, there was a net outstanding balance of \$3.3 million for this matter included in Accrued liabilities on the Condensed Consolidated Balance Sheet.

### **Contract-Related Contingencies**

The Company has certain contingent obligations that arise in the ordinary course of providing services to its customers. These contingencies are generally the result of contracts that require the Company to comply with certain performance measurements or the delivery of certain services to customers by a specified deadline. The Company believes the adjustments to the transaction price, if any, under these contract provisions will not result in a significant revenue reversal or have a material adverse effect on the Company's consolidated balance sheets, consolidated statements of operations or consolidated statements of cash flows.

## **15. Fair Value Measurement**

### **Assets and Liabilities Measured at Fair Value**

The carrying amount of assets and liabilities including cash and cash equivalents, accounts receivable, accounts payable and current portion of long-term debt approximated their fair value as of December 31, 2021 and 2020, due to the relative short maturity of these instruments. Management estimates the fair values of the secured term loan, secured 2023 notes and secured 2026 notes at approximately 80.0%, 79.0% and 77.0% respectively, of the respective principal balance outstanding as of December 31, 2021. The fair values of secured borrowings under the Company's securitization facility, BRCC facility and senior secured revolving credit facility are equal to the respective carrying values. Other debt represents the Company's outstanding loan balances associated with various hardware, software purchases, maintenance and leasehold improvements along with loans and receivables factoring arrangement entered into by subsidiaries of the Company and as such, the cost incurred would approximate fair value. Property and equipment, intangible assets, capital lease obligations, and goodwill are not required to be re-measured to fair value on a recurring basis. These assets are evaluated for impairment if certain triggering events occur. If such evaluation indicates that impairment exists, the respective asset is written down to its fair value.

The Company determined the fair value of its long-term debt using Level 2 inputs including the recent issue of the debt, the Company's credit rating, and the current risk-free rate. The Company's contingent liabilities related to prior acquisitions are re-measured each period and represent a Level 3 measurement as it is based on the settlement amount based on the settlement agreement terms less amount already paid.



The Company determined the fair value of the interest rate swap using Level 2 inputs. The Company used closing prices as provided by a third party institution. (Refer to Note 2 - Basis of Presentation and Summary of Significant Accounting Policies).

The following table provides the carrying amounts and estimated fair values of the Company’s financial instruments as of December 31, 2021 and December 31, 2020:

As of December 31, 2021	Carrying Amount	Fair Value	Fair Value Measurements		
			Level 1	Level 2	Level 3
<b>Recurring assets and liabilities:</b>					
Long-term debt	\$ 1,104,399	\$ 895,615	\$ —	\$ 895,615	\$ —
<b>Nonrecurring assets and liabilities:</b>					
Goodwill	358,323	358,323	—	—	358,323
<b>As of December 31, 2020</b>					
	Carrying Amount	Fair Value	Fair Value Measurements		
			Level 1	Level 2	Level 3
<b>Recurring assets and liabilities:</b>					
Long-term debt	\$ 1,498,004	\$ 604,775	\$ —	\$ 604,775	\$ —
Interest rate swap liability	125	125	—	125	—
Acquisition contingent liability	300	300	—	—	300
<b>Nonrecurring assets and liabilities:</b>					
Goodwill	359,781	359,781	—	—	359,781

The following table reconciles the beginning and ending balances of net assets and liabilities classified as Level 3 for which a reconciliation is required:

	December 31, 2021	December 31, 2020
Balance as of Beginning of Period	\$ 300	\$ 721
Earn-out Adjustment	—	279
Payments	(300)	(700)
Balance as of End of Period	\$ —	\$ 300

## 16. Stock-Based Compensation

At Closing, SourceHOV had 24,535 restricted stock units (“RSUs”) outstanding under its 2013 Long Term Incentive Plan (“2013 Plan”). Simultaneous with the Closing, the 2013 Plan, as well as all vested and unvested RSUs under the 2013 Plan, were assumed by Ex-Sigma (the sole equityholder of Ex-Sigma 2), an entity formed by the former SourceHOV equity holders. In accordance with U.S. GAAP, the Company incurred compensation expenses related to the 9,880 unvested RSUs as of July 12, 2017 on a straight-line basis until fully vested, because the recipients of the RSUs were employees of the Company. All unvested RSUs under the 2013 Plan were vested by April 2019. As of December 31, 2021, there were no outstanding obligations under the 2013 Plan.

### Exela 2018 Stock Incentive Plan

On January 17, 2018, Exela’s 2018 Stock Incentive Plan (the “2018 Plan”) became effective. The 2018 Plan provides for the grant of incentive and nonqualified stock options, restricted stock, restricted stock units, stock appreciation rights, performance awards, and other stock-based compensation to eligible participants. The Company was initially authorized to issue up to 2,774,588 shares of Common Stock under the 2018 Plan. On December 31, 2021, the shareholders of the Company approved our Amended and Restated 2018 Stock Incentive Plan increasing the number of shares of Common Stock reserved for issuance from an original 2,774,589 shares to 17,848,076.

## Restricted Stock Unit Grants

Restricted stock unit awards generally vest ratably over a one to two year period. Restricted stock units are subject to forfeiture if employment terminates prior to vesting and are expensed ratably over the vesting period.

A summary of restricted stock unit activities under the 2018 Plan for the year ended December 31, 2021 is summarized in the following table:

	Number of Units	Weighted Average Grant Date Fair Value	Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
Outstanding Balance as of December 31, 2020	26,455	\$ 3.78	0.91	\$ 50
Granted	1,466,084	1.78		
Forfeited	(80,001)	2.73		
Vested	(43,530)	2.30		
Outstanding Balance as of December 31, 2021	1,369,008	\$ 1.75	0.11	\$ 2,393

## Options

Under the 2018 Plan, stock options are granted at a price per share not less than 100% of the fair market value per share of the underlying stock at the grant date. The vesting period for each option award is established on the grant date, and the options generally expire 10 years from the grant date. Options granted under the 2018 Plan generally require no less than a two or four year ratable vesting period. Stock option activity for the year 2021 is summarized in the following table:

	Outstanding	Weighted Average Grant Date Fair Value	Weighted Average Exercise Price	Average Remaining Vesting Period (Years)	Aggregate Intrinsic Value (2)
Outstanding Balance as of December 31, 2020	1,635,700	\$ 5.67	\$ 11.89	1.42	\$ —
Granted	—	—	—	—	—
Exercised	—	—	—	—	—
Forfeited	(190,401)	5.97	—	—	—
Expired	—	—	—	—	—
Outstanding Balance as of December 31, 2021 (1)	1,445,299	\$ 5.63	\$ 11.78	0.69	\$ —

(1) 569,880 of the outstanding options are exercisable as of December 31, 2021.

(2) Exercise prices of all of the outstanding options as of December 31, 2021 were higher than the market price of the shares of the Company. Therefore, aggregate intrinsic value was zero.

As of December 31, 2021, there was approximately \$1.4 million of total unrecognized compensation expense related to non-vested restricted stock unit awards and stock option awards under the 2018 Plan, which will be recognized over the respective service period. Stock-based compensation expense is recorded within Selling, general, and administrative expenses. The Company incurred total compensation expense of \$2.7 million, \$2.8 million, and \$7.8 million related to restricted stock unit awards and stock option awards under the 2013 Plan and 2018 Plan awards for the years ended December 31, 2021, 2020, and 2019, respectively.

## Market Performance Units

On September 14, 2021, the Company granted its Executive Chairman performance units with a market performance condition, which are notional units representing the right to receive one share of Common Stock (or the cash value of one share of Common Stock). Until such time that the Company obtained the approval of the stockholders of the Company regarding an increase to the number of shares authorized for issuance under its 2018 Plan in accordance with Nasdaq Listing Rule 5635(a), these performance units would be settled in cash, and following such shareholder approval, at the election of the compensation committee of the Company, might be settled in cash or in shares of

Common Stock. The performance units provide that until an increase to the share reserve is approved, such performance units are subject to the terms and conditions of the 2018 Plan as though granted thereunder, but not be considered an award that is outstanding under the plan, and following such time that the plan amendment is approved, constitute an award under the 2018 Plan.

Fifty percent of the performance units covered by the award will vest if, at any time during the period commencing September 14, 2021 and ending June 30, 2024, the volume weighted average of the reported closing price of the Company's Common Stock is \$10 per share or greater on (x) 60 consecutive trading days or (y) 90 non-consecutive trading days in any 180 day period (the "Tranche 1"). In addition, the remaining 50% of the performance units will vest if, at any time during the period commencing September 14, 2021 and ending June 30, 2025, the volume weighted average of the reported closing prices of the Company's Common Stock is \$20 per share or greater on (x) 60 consecutive trading days or (y) 90 non-consecutive trading days in any 180 day period (the "Tranche 2"). Any Tranche 1 and Tranche 2 units that are not earned by June 30, 2024 and June 30, 2025 (the "Expiration date"), respectively, will be forfeited for no consideration and will no longer be eligible to vest. In addition, if a change in control occurs prior to the applicable expiration date, if the performance units are assumed by the acquirer, the units will remain outstanding and eligible to vest based solely on his continued service to the Company. If in connection with such change in control the performance units are not assumed by an acquirer, a number of performance units will vest based on the per share price paid in the transaction, with 0% vesting if the per share price is equal to or less than \$2.00 per share, and 100% of the Tranche 1 vesting if the per share price is equal to or greater than \$10 and 100% of the Tranche 2 vesting if the per share price is equal to or greater than \$20, and a number of Tranche 1 and Tranche 2 vesting determined based on a straight line interpolation if the share price is between \$2.00 and \$10.00 or \$20.00, respectively. In addition, if there is a change in control that is principally negotiated and approved by, and recommended to the Company's shareholders by, a special committee of independent directors which committee does not include the Executive Chairman, and neither he nor any of his affiliates is directly or indirectly an equity holder of the acquiring Company, and the Tranche 1 are not assumed by an acquirer in connection with such transaction, all of his then unvested Tranche 1 will vest, and the Tranche 2 would be eligible for the pro rata vesting described above. The Executive Chairman will remain eligible to earn his performance units so long as he remains employed with the Company as Executive Chairman through December 31, 2023 and following such date he remains engaged with the Company in any capacity, including as a non-employee director.

On December 31, 2021, the Company obtained the approval of the stockholders of the Company for the 2018 Plan amendment regarding an increase to the number of shares authorized for issuance under its 2018 Plan. After approval of the amended and restated 2018 Plan, the performance units are an award that is outstanding under the amended and restated 2018 Plan. Therefore, the performance units may be settled in cash or in shares of Common Stock of the Company at the election of the compensation committee of the Company.

The fair value of the awards was determined to be \$1.48 and \$1.51 for Tranche 1 and Tranche 2, respectively, on the grant date by application of the Monte Carlo simulation model. Until December 31, 2021, the performance units were cash-settled awards and therefore accounted for as a liability classified award. On December 31, 2021, upon the approval of the amended and restated 2018 Plan, the performance units may be settled in cash or in shares of Common Stock of the Company at the election of the compensation committee of the Company, therefore the award was reclassified to equity. On December 31, 2021, the modification date fair value of the awards was determined to be \$0.44 and \$0.47 for Tranche 1 and Tranche 2, respectively, by application of the Monte Carlo simulation model.

The following table summarizes the activity for the market performance restricted stock units for the year ended December 31, 2021:

	Number of Units	Weighted Average Fair Value	Weighted Average Period Over Which Expected to be Recognized
Outstanding Balance as of December 31, 2020	—	\$ —	—
Granted	8,500,000	1.50	
Forfeited	—	—	
Vested	—	—	
Outstanding Balance as of December 31, 2021	8,500,000	\$ 0.46	2.98

As of December 31, 2021, there was approximately \$2.7 million of total unrecognized compensation expense related to non-vested performance unit awards, which will be recognized over the remaining requisite service period. We recognized \$1.2 million compensation expense associated with the performance unit award for the year ended December 31, 2021.

## 17. Stockholders' Equity

The following description summarizes the material terms and provisions of the securities that the Company has authorized.

### Common Stock

The Company is authorized to issue 1,600,000,000 shares of Common Stock. Except as otherwise required by law or as otherwise provided in any certificate of designation for any series of preferred stock or as provided for in the Director Nomination Agreements, the holders of our Common Stock possess all voting power for the election of our board of directors and all other matters requiring stockholder action and will at all times vote together as one class on all matters submitted to a vote of Exela stockholders. Holders of our Common Stock are entitled to one vote per share on matters to be voted on by stockholders. Holders of our Common Stock will be entitled to receive such dividends and other distributions, if any, as may be declared from time to time by the board of directors in its discretion out of funds legally available therefor and shall share equally on a per share basis in such dividends and distributions. The holders of the Common Stock have no conversion, preemptive or other subscription rights and there are no sinking fund or redemption provisions applicable to the Common Stock. During fiscal 2021, 511,939 shares of Series A Preferred Stock were converted into 223,977 shares of Common Stock. As of December 31, 2021 and December 31, 2020, there were 265,194,961 and 49,242,225 shares outstanding, respectively.

#### *Reverse Stock Split*

On January 25, 2021, we effected a one-for-three reverse split (the "Reverse Stock Split") of our issued and outstanding shares of Common Stock. As a result of the Reverse Split every three (3) shares of Common Stock issued and outstanding were automatically combined into one (1) share of issued and outstanding Common Stock, without any change in the par value per share. All information related to Common Stock, stock options, restricted stock units, warrants and earnings per share have been retroactively adjusted to give effect to the Reverse Stock Split for all periods presented. Giving effect to the Reverse Split the Company's issued and outstanding stock decreased from 147,511,430 to 49,242,225 as of December 31, 2020.

#### *Common Stock At-The-Market Sales Program*

On May 27, 2021, the Company entered into an At Market Issuance Sales Agreement ("First ATM Agreement") with B. Riley Securities, Inc. ("B. Riley") and Cantor Fitzgerald & Co. ("Cantor"), as distribution agents under which the Company may offer and sell shares of the Company's Common Stock from time to time through the Distribution Agents, acting as sales agent or principal. On September 30, 2021, the Company entered into a second At

Market Issuance Sales Agreement with B. Riley, BNP Paribas Securities Corp., Cantor, Mizuho Securities USA LLC and Needham & Company, LLC, as distribution agents (together with the First ATM Agreement, the “ATM Agreement”).

Sales of the shares of Common Stock under the ATM Agreement, will be in “at the market offerings” as defined in Rule 415 under the Securities Act, including, without limitation, sales made directly on or through the Nasdaq or on any other existing trading market for the Common Stock, as applicable, or to or through a market maker or any other method permitted by law, including, without limitation, negotiated transactions and block trades. Shares of Common Stock sold under the ATM Agreement are offered pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-255707), filed with the SEC on May 3, 2021, and declared effective on May 12, 2021 (the “2021 Registration Statement”), and the prospectus dated May 12, 2021 included in the 2021 Registration Statement and the related prospectus supplements for sales of shares of Common Stock as follows:

Supplement	Period	Number of Shares Sold	Weighted Average Price Per Share	Gross Proceeds	Net Proceeds
Prospectus supplement dated May 27, 2021 with an aggregate offering price of up to \$100 million (“Common ATM Program–1”)	May 28, 2021 and through July 1, 2021	49,423,706	\$2.008	\$99.3 million	\$95.7 million
Prospectus supplement dated June 30, 2021 with an aggregate offering price of up to \$150 million (“Common ATM Program–2”)	June 30, 2021 and through September 2, 2021	57,580,463	\$2.603	\$149.9 million	\$144.4 million
Prospectus supplement dated September 30, 2021 with an aggregate offering price of up to \$250.0 million (“Common ATM Program–3”)	October 6, 2021 through December 31, 2021	98,594,447	\$1.327	\$130.8 million	\$126.4 million

### Preferred Stock

The Company is authorized to issue 20,000,000 shares of preferred stock with such designations, voting and other rights and preferences as may be determined from time to time by the board of directors. At December 31, 2021 and December 31, 2020, the Company had 2,778,111 shares and 3,290,050 shares of Series A Preferred Stock outstanding, respectively. The par value of the Series A Preferred Stock is \$0.0001 per share. Each share of Series A Preferred Stock is convertible at the holder's option, at any time into the number of shares of Common Stock determined as of the date of conversion using a certain conversion formula that takes into account the amount of Liquidation Preference per share as adjusted for accrued but unpaid dividends, as described below. As of December 31, 2021, after taking into account the effect of the Reverse Stock Split, each outstanding shares of Series A Preferred Stock was convertible into 0.4713 shares of Common Stock using this conversion formula. Accordingly, as of December 31, 2021, 1,309,187 shares of Common Stock were issuable upon conversion of the remaining 2,778,111 shares of Series A Preferred Stock.

Holders of the Series A Preferred Stock are entitled to receive cumulative dividends at a rate per annum of 10% of the dollar amount of per share liquidation preference (plus accumulated but unpaid dividends, the “Liquidation Preference”) per share of Series A Preferred Stock, paid or accrued quarterly in arrears. From the issue date through December 31, 2021 the amount of all accrued but unpaid dividends on the Series A Preferred Stock have been added to the Liquidation Preference. The Company shall add the amount of all accrued but unpaid dividends on each quarterly dividend payment date to the Liquidation Preference, except to the extent the Company elects to make all or any portion of such payment in cash on or prior to the applicable dividend payment date, in which case, the amount of the accrued but unpaid dividends that is added to the Liquidation Preference shall be reduced on a dollar-for-dollar basis by the amount of any such cash payment. The Company is not required to make any payment or allowance for unpaid dividends, whether or not in arrears, on converted shares of Series A Preferred Stock or for dividends on the shares of Common Stock issued upon conversion of such shares. The dividend accumulation for the years ended December 31, 2021 and 2020 was \$1.6 million and \$1.3 million, respectively as reflected on the Consolidated Statement of Operations.

As of December 31, 2021, the total accumulated but unpaid dividends on the Series A Preferred Stock since inception on July 12, 2017 was \$12.3 million. The per share average of cumulative preferred dividends is \$4.4.

In addition, holders of the Series A Preferred Stock will participate in any dividend or distribution of cash or other property paid in respect of the Common Stock pro rata with the holders of the Common Stock (other than certain dividends or distributions that trigger an adjustment to the conversion rate, as described in the Certificate of Designations), as if all shares of Series A Preferred Stock had been converted into Common Stock immediately prior to the date on which such holders of the Common Stock became entitled to such dividend or distribution.

### **Treasury Stock**

On November 8, 2017, the Company's board of directors authorized a share buyback program (the "Share Buyback Program"), pursuant to which the Company was permitted to purchase up to 1,666,667 shares of Common Stock. The Share Buyback Program has expired. As of December 31, 2021, 929,049 shares had been repurchased under the Share Buyback Program and they are held in treasury stock. The Company records treasury stock using the cost method.

During the first quarter of 2020, 1,523,578 shares of Common Stock were returned to the Company by Ex-Sigma 2 in connection with the Appraisal Action. These shares are also included in treasury stock.

### **Warrants**

At December 31, 2021, there were warrants outstanding to purchase 15,565,152 shares of our Common Stock, consisting of 35,000,000 warrants to purchase one-sixth of one share outstanding from our 2015 IPO and 9,731,819 warrants to purchase one share from the private placement that was completed in March 2021.

#### *IPO Warrants*

As part of its IPO, Quinpario had issued 35,000,000 units comprising one share of Common Stock and one warrant of which 34,986,302 have been separated from the original unit and 13,698 warrants remain an unseparated part of the originally issued units (the Common Stock included in these originally issued units (adjusted to reflect the Reverse Split) have been accounted for in the number of shares of Common Stock outstanding referred to above). The warrants traded on the OTC Pink under the symbol "XELAW" as of December 31, 2021.

Each IPO warrant entitles the holder to purchase one-sixth of one share of Common Stock at a price of \$5.75 per one-sixth share (\$34.50 per whole share). IPO Warrants may be exercised only for a whole number of shares of Common Stock. No fractional shares will be issued upon exercise of the warrants. Each IPO warrant is currently exercisable and will expire July 12, 2022 (five years after the completion of the Novitex Business Combination), or earlier upon redemption.

The Company may call the IPO warrants for redemption at a price of \$0.01 per warrant upon a minimum of 30 days' prior written notice of redemption, if, and only if, the last sales price of the shares of Common Stock equals or exceeds \$72.00 per share for any 20 trading days within a 30 trading day period (the "30-day trading period") ending three business days before the Company sends the notice of redemption, and if, and only if, there is a current registration statement in effect with respect to the shares of Common Stock underlying such warrants commencing five business days prior to the 30-day trading period and continuing each day thereafter until the date of redemption.

#### *Private Placement of Unregistered Shares and Warrants*

On March 15, 2021, the Company, entered into a securities purchase agreement with certain accredited institutional investors pursuant to which the Company issued and sold to ten accredited institutional investors in a private placement an aggregate of 9,731,819 unregistered shares of the Company's Common Stock at a price of \$2.75 per share and an equal number of warrants, generating gross proceeds to the Company of \$26.8 million. Cantor Fitzgerald acted as underwriter in connection with such sale of unregistered securities and received a placement fee of 5.5% of gross

proceeds in connection with such service. In selling the shares without registration, the Company relied on exemptions from registration available under Section 4(a)(2) of the Securities Act of 1933 and Rule 506 promulgated thereunder. The shares of Common Stock sold together with these warrants are included in the Company's calculation of total shares outstanding. The Company filed a registration statement on Form S-3 on May 3, 2021 that registered these shares and the shares underlying these private placement warrants.

Each private placement warrant entitles the holder to purchase one share of Common Stock, at an exercise price of \$4.00 per share and will expire on September 19, 2026. The private placement warrants are not traded as of December 31, 2021 and are not subject to redemption by the Company.

## **18. Related-Party Transactions**

### **Relationship with HandsOn Global Management**

The Company incurred reimbursable travel expenses to HOVS LLC and HandsOn Fund 4 I, LLC (collectively, together with certain affiliated entities controlled by HandsOn Global Management LLC, "HGM") of less than \$0.1 million, \$0.1 million and \$0.6 million for the years ended December 31, 2021, 2020 and 2019, respectively. As of December 31, 2021, HGM beneficially owned approximately 9.2% of the Company's Common Stock, including shares controlled pursuant to voting agreements (as described below) and shares issuable upon conversion of Series A Preferred Stock. Certain members of our Board of Directors, including our Executive Chairman, are also affiliated with HGM.

Pursuant to a master agreement dated January 1, 2015 between Rule 14, LLC and a subsidiary of the Company, the Company incurs marketing fees to Rule 14, LLC, a portfolio company of HGM. Similarly, the Company is party to ten master agreements with entities affiliated with HGM's managed funds, each of which were entered into during 2015 and 2016. Each master agreement provides the Company with use of certain technology and includes a reseller arrangement pursuant to which the Company is entitled to sell these services to third parties. Any revenue earned by the Company in such third-party sale is shared 75%/25% with each of HGM's venture affiliates in favor of the Company. The brands are Zuma, Athena, Peri, BancMate, Spring, Jet, Teletype and CourtQ. The Company has the license to use and resell such brands, as described in the applicable master service agreements. The Company incurred fees relating to these agreements of \$5.7 million, \$1.9 million, and \$1.0 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Certain operating companies lease their operating facilities from HOV RE, LLC and HOV Services Limited, which are affiliates under common control with HGM. The rental expense for these operating leases was \$0.2 million, \$0.2 million, and \$0.4 million for the years ended December 31, 2021, 2020, and 2019, respectively. In addition, HOV Services, Ltd. provides the Company data capture and technology services. The expense recognized for these services was approximately \$1.3 million, \$1.4 million, and \$1.5 million for the years ended December 31, 2021, 2020, and 2019, respectively. These expenses are included in cost of revenue in the consolidated statements of operations.

Certain premium payments, secondary offering fees and legal expenses were reimbursed to Ex-Sigma 2 pursuant to the terms of the Consent, Waiver and Amendment dated June 15, 2017, by and among the Company, Quinpario Merger Sub I, Inc., Quinpario Merger Sub II, Inc., SourceHOV, Novitex, Novitex Parent, L.P., Ex Sigma LLC, HOVS LLC and HandsOn Fund 4 I, LLC, amending the Novitex Business Combination agreement (the "Consent, Waiver and Amendment"). These expenses are included in related party expense in the consolidated statements of operations. The Company recorded related party expenses of \$1.7 million during the year ended December 31, 2019 related to the Company's obligation to reimburse Ex-Sigma 2 for premium payments on the \$55.8 million margin loan obtained by Ex-Sigma 2 to purchase additional common and preferred shares from the Company to help meet the minimum cash requirements needed to close the Novitex Business Combination (the "Margin Loan"). The Company recorded related party expenses of \$2.1 million for the year ended December 31, 2019 for reimbursable expenses related to secondary offerings of shares by Ex-Sigma 2, the proceeds of which were used to repay the Margin Loan. The reimbursement payments were made in the second half of 2019. The Company recorded related party expenses of \$0.3 million and \$0.6 million for the years ended December 31, 2020 and 2019, respectively, for reimbursable legal expenses of Ex-Sigma 2.



The Company made payments totaling \$5.6 million to Ex-Sigma 2 during the fourth quarter of 2019. Separately, the Company determined it was obligated to reimburse premium payments of \$6.9 million made by Ex-Sigma 2 on the Margin Loan under the terms of the Consent, Waiver and Amendment. Pursuant to a written settlement agreement entered into in June 2020, Ex-Sigma, SourceHOV and the Company agreed that the \$5.6 million of payments made during the fourth quarter of 2019 would be accepted to fully discharge the Company's obligation to reimburse Ex-Sigma 2 for the \$6.9 million of premium payments. The Company recorded the difference of \$1.3 million between the obligation amount and the settlement amount as an increase to additional paid in capital in the consolidated statements of stockholders' deficit for the year ended December 31, 2020.

In addition, in October 2019, the Company awarded \$6.3 million in bonuses to certain employees who were also indirect equity holders of Ex-Sigma 2 through their holdings of Ex-Sigma that had been issued upon the vesting of RSUs granted under the 2013 Plan. Ex-Sigma 2 pledged all of its capital stock in the Company as collateral for the Margin Loan. The Company remitted the net amount of \$4.6 million (after withholding payroll taxes of \$1.7 million) toward the outstanding balance on the Margin Loan in order to benefit such employees. The bonus amount remitted by the Company was originally determined by Ex-Sigma management based on such employees' over-all equity ownership of Ex-Sigma. Following payment in full of the Margin Loan, during the first quarter of 2020, Ex-Sigma 2 distributed the shares of the Company's capital stock held by it to its sole equity holder, Ex-Sigma, who distributed the shares to its equity holders, including the bonus recipients. Many recipients of these shares have entered into voting agreements in respect of those shares with HGM. These bonus payments were not processed or approved according to the Company's internal control policies. In May 2020, each employee that received the bonus countersigned an authorization letter confirming their authorization for the Company to remit the amount of their net bonus to pay a portion of the Margin Loan. The Company recorded the \$6.3 million bonus payments as compensation expense in selling, general and administrative expenses in the accompanying statements of operations for the year ended December 31, 2019.

#### **Consulting Agreement**

The Company receives services from Oakana Holdings, Inc. The Company and Oakana Holdings, Inc. are related through a family relationship between certain shareholders and the president of Oakana Holdings, Inc. The expense recognized for these services was approximately \$0.2 million, \$0.2 million and \$0.2 million for the years ended December 31, 2021, 2020 and 2019, respectively.

#### **Subscription Agreements**

During November 2021 and December 2021, the Company entered into separate subscription agreements with five of its directors. Pursuant to these subscription agreements, the Company issued and sold 62,500, 158,730, 63,492, 79,365 and 39,682 shares of Common Stock of the Company to Sharon Chadha, Par Chadha, Martin Akins, J. Coley Clark and John Rexford, respectively, for a purchase price of \$0.1 million, \$0.2 million, less than \$0.1 million, \$0.1 million and less than \$0.1 million, respectively.

#### **Relationship with Apollo Global Management, LLC**

The Company provided services to and received services from certain Apollo Global Management, LLC ("Apollo") affiliated companies. Funds managed by Apollo held the second largest position in our Common Stock following the Novitex Business Combination and had the right to designate two of the Company's directors pursuant to a director nomination agreement. Apollo has announced that its affiliated funds ceased being shareholders on March 11, 2020. The Company excluded disclosure of transactions related to Apollo after March 31, 2020 as the related party relationship with Apollo ceased during the first quarter of 2020.

On November 18, 2014, one of the Company's subsidiaries entered into a master services agreement with an indirect wholly owned subsidiary of Apollo. Pursuant to this master services agreement, the Company provided printer supplies and maintenance services, including toner maintenance, training, quarterly business review and printer procurement. The Company recognized revenue of \$0.1 million and \$0.6 million under this agreement for the years ended December 31, 2020 and 2019, respectively, in its consolidated statements of operations.



In April 2016, one of the Company’s subsidiaries entered into a master services agreement with Presidio Networked Solutions Group, LLC (“Presidio Group”), a wholly owned subsidiary of Presidio, Inc., a portion of which is owned by affiliates of Apollo. Pursuant to this master services agreement, Presidio Group provided the Company with employees, subcontractors, and/or goods and services. For the years ended December 31, 2020 and 2019 there were related party expenses of \$0.2 million and \$1.0 million, respectively, for this service.

On January 18, 2017, one of the Company’s subsidiaries entered into a master purchase and professional services agreement with Caesars Enterprise Services, LLC (“Caesars”). Caesars is controlled by investment funds affiliated with Apollo. Pursuant to this master purchase and professional services agreement, the Company provided managed print services to Caesars, including general equipment operation, supply management, support services and technical support. The Company recognized revenue of \$0.9 million and \$4.4 million for years ended December 31, 2020 and 2019.

On May 5, 2017, one of the Company’s subsidiaries entered into a master services agreement with ADT LLC. ADT LLC is controlled by investment funds affiliated with Apollo. Pursuant to this master services agreement, the Company provided ADT LLC with mailroom and onsite mail delivery services at an ADT LLC office location and managed print services, including supply management, equipment maintenance and technical support services. The Company recognized revenue of \$0.3 million and \$1.2 million in our consolidated statements of operations from ADT LLC under this master services agreement for the years ended December 31, 2020 and 2019.

On July 20, 2017, one of the Company’s subsidiaries entered into a master services agreement with Diamond Resorts Centralized Services Company. Diamond Resorts Centralized Services Company is controlled by investment funds affiliated with Apollo. Pursuant to this master services agreement, the Company provided commercial print and promotional product procurement services to Diamond Resorts Centralized Services Company, including sourcing, inventory management and fulfillment services. The Company recognized revenue of \$0.9 million and \$5.4 million for the year ended December 31, 2020 and 2019 and cost of revenue of less than \$0.1 million for each of the years ended December 31, 2020 and 2019 from Diamond Resorts Centralized Services Company under this master services agreement.

*Payable and Receivable/Prepayment Balances with Affiliates*

Payable and receivable/prepayment balances with affiliates as of December 31, 2021 and December 31, 2020 are as follows below:

	December 31, 2021		December 31, 2020	
	Receivables and Prepaid Expenses	Payables	Receivables and Prepaid Expenses	Payables
HOV Services, Ltd	\$ 708	\$ —	\$ 711	\$ —
Rule 14	—	1,483	—	44
HGM	7	—	—	52
Oakana	—	1	—	1
	\$ 715	\$ 1,484	\$ 711	\$ 97

**19. Segment and Geographic Area Information**

The Company’s operating segments are significant strategic business units that align its products and services with how it manages its business, approaches the markets and interacts with its clients. The Company is organized into three segments: ITPS, HS, and LLPS.

**ITPS:** The ITPS segment provides a wide range of solutions and services designed to aid businesses in information capture, processing, decisioning and distribution to customers primarily in the financial services, commercial, public sector and legal industries.

**HS:** The HS segment operates and maintains a consulting and outsourcing business specializing in both the healthcare provider and payer markets.

**LLPS:** The LLPS segment provides a broad and active array of legal services in connection with class action, bankruptcy labor, claims adjudication and employment and other legal matters.

The chief operating decision maker reviews segment profit to evaluate operating segment performance and determine how to allocate resources to operating segments. "Segment profit" is defined as revenue less cost of revenue (exclusive of depreciation and amortization). The Company does not allocate Selling, general, and administrative expenses, depreciation and amortization, interest expense and sundry, net. The Company manages assets on a total company basis, not by operating segment, and therefore asset information and capital expenditures by operating segments are not presented. A reconciliation of segment profit to net loss before income taxes is presented below.

	Year ended December 31, 2021			
	ITPS	HS	LLPS	Total
Revenue	\$ 874,126	\$ 217,839	\$ 74,641	\$ 1,166,606
Cost of revenue (exclusive of depreciation and amortization)	672,191	163,445	53,459	889,095
<b>Segment profit</b>	201,935	54,394	21,182	277,511
Selling, general and administrative expenses (exclusive of depreciation and amortization)				169,781
Depreciation and amortization				77,150
Related party expense				9,191
Interest expense, net				168,048
Debt modification and extinguishment costs (gain), net				(16,689)
Sundry expense, net				363
Other expense, net				401
<b>Net loss before income taxes</b>				<b>\$ (130,734)</b>

	Year ended December 31, 2020			
	ITPS	HS	LLPS	Total
Revenue	\$ 1,005,043	\$ 219,047	\$ 68,472	\$ 1,292,562
Cost of revenue (exclusive of depreciation and amortization)	815,013	159,917	48,614	1,023,544
<b>Segment profit</b>	190,030	59,130	19,858	269,018
Selling, general and administrative expenses (exclusive of depreciation and amortization)				186,104
Depreciation and amortization				93,953
Related party expense				5,381
Interest expense, net				173,878
Debt modification and extinguishment costs (gain), net				9,589
Sundry income, net				(153)
Other income, net				(34,788)
<b>Net loss before income taxes</b>				<b>\$ (164,946)</b>

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	Year ended December 31, 2019			
	ITPS	HS	LLPS	Total
Revenue	\$ 1,234,284	\$ 256,721	\$ 71,332	\$ 1,562,337
Cost of revenue (exclusive of depreciation and amortization)	1,001,655	180,045	43,035	1,224,735
<b>Segment profit</b>	232,629	76,676	28,297	337,602
Selling, general and administrative expenses (exclusive of depreciation and amortization)				198,864
Depreciation and amortization				100,903
Impairment of goodwill and other intangible assets				349,557
Related party expense				9,501
Interest expense, net				163,449
Debt modification and extinguishment costs (gain), net				1,404
Sundry expense, net				969
Other expense, net				14,429
<b>Net loss before income taxes</b>				<b>\$ (501,474)</b>

The following table presents revenues by principal geographic area where the Company's customers are located for the years ended December 31, 2021, 2020, and 2019.

	Years ended December 31,		
	2021	2020	2019
United States	\$ 941,985	\$ 1,057,006	\$ 1,286,678
EMEA	205,772	213,418	248,466
Other	18,849	22,138	27,193
Total Consolidated Revenue	<u>\$ 1,166,606</u>	<u>\$ 1,292,562</u>	<u>\$ 1,562,337</u>

## 20. Selected Quarterly Financial Results (Unaudited)

The following tables show a summary of the Company's quarterly financial information for each of the four quarters of 2021 and 2020 (dollars in thousands, except per share data):

	Q1 2021	Q2 2021	Q3 2021	Q4 2021
<b>Revenue:</b>				
ITPS	\$ 231,875	\$ 217,260	\$ 208,304	\$ 216,687
HS	51,093	56,204	53,995	56,547
LLPS	17,088	19,545	16,930	21,078
<b>Total Revenue</b>	<b>300,056</b>	<b>293,009</b>	<b>279,229</b>	<b>294,312</b>
<b>Cost of revenue:</b>				
ITPS	185,502	156,669	157,721	172,299
HS	35,818	38,973	41,945	46,709
LLPS	11,267	13,438	12,065	16,689
<b>Cost of revenue (exclusive of depreciation and amortization)</b>	<b>232,587</b>	<b>209,080</b>	<b>211,731</b>	<b>235,697</b>
Selling, general and administrative expenses (exclusive of depreciation and amortization)	41,885	36,390	43,244	48,262
Depreciation and amortization	19,599	19,420	19,094	19,037
Related party expense	1,707	2,748	2,744	1,992
<b>Operating income (loss)</b>	<b>4,278</b>	<b>25,371</b>	<b>2,416</b>	<b>(10,676)</b>
<b>Other expense (income), net:</b>				
Interest expense, net	43,131	42,867	41,757	40,293
Debt modification and extinguishment costs (gain)	—	—	(28,070)	11,381
Sundry expense (income), net	213	(787)	136	801
Other expense (income), net	152	651	366	(768)
<b>Net loss before income taxes</b>	<b>(39,218)</b>	<b>(17,360)</b>	<b>(11,773)</b>	<b>(62,383)</b>
Income tax (expense) benefit	18	(2,007)	(1,441)	(8,226)
<b>Net loss</b>	<b>(39,200)</b>	<b>(19,367)</b>	<b>(13,214)</b>	<b>(70,609)</b>
Cumulative dividends for Series A Preferred Stock	896	(798)	(822)	(852)
<b>Net loss attributable to common stockholders</b>	<b>\$ (38,304)</b>	<b>\$ (20,165)</b>	<b>\$ (14,036)</b>	<b>\$ (71,461)</b>
Weighted average outstanding common shares (Refer to Net Loss per Share discussion in Note 2)	50,646,482	61,474,020	150,655,012	207,150,475
<b>Earnings per share:</b>				
Basic and diluted	\$ (0.76)	\$ (0.33)	\$ (0.09)	\$ (0.34)

	Q1 2020	Q2 2020	Q3 2020	Q4 2020
<b>Revenue:</b>				
ITPS	\$ 284,112	\$ 243,029	\$ 234,365	\$ 243,537
HS	64,049	49,166	54,209	51,623
LLPS	17,290	15,527	16,706	18,949
<b>Total Revenue</b>	<b>365,451</b>	<b>307,722</b>	<b>305,280</b>	<b>314,109</b>
<b>Cost of revenue:</b>				
ITPS	235,120	195,835	183,671	200,387
HS	44,931	36,148	39,444	39,394
LLPS	12,488	9,805	11,107	15,214
<b>Cost of revenue (exclusive of depreciation and amortization)</b>	<b>292,539</b>	<b>241,788</b>	<b>234,222</b>	<b>254,995</b>
Selling, general and administrative expenses (exclusive of depreciation and amortization)	50,374	47,014	42,837	45,879
Depreciation and amortization	23,185	22,847	22,095	25,826
Related party expense	1,551	1,146	1,360	1,324
<b>Operating income (loss)</b>	<b>(2,198)</b>	<b>(5,073)</b>	<b>4,766</b>	<b>(13,915)</b>
<b>Other expense (income), net:</b>				
Interest expense, net	41,588	44,440	43,612	44,238
Debt modification and extinguishment costs (gain)	—	—	—	9,589
Sundry expense (income), net	1,082	(899)	(434)	98
Other expense, net	(34,657)	(584)	(10,414)	10,867
<b>Net loss before income taxes</b>	<b>(10,211)</b>	<b>(48,030)</b>	<b>(27,998)</b>	<b>(78,707)</b>
Income tax (expense) benefit	(2,459)	(661)	(320)	(10,144)
<b>Net loss</b>	<b>(12,670)</b>	<b>(48,691)</b>	<b>(28,318)</b>	<b>(88,851)</b>
Cumulative dividends for Series A Preferred Stock	1,440	(858)	(976)	(915)
<b>Net loss attributable to common stockholders</b>	<b>\$ (11,230)</b>	<b>\$ (49,549)</b>	<b>\$ (29,294)</b>	<b>\$ (89,766)</b>
Weighted average outstanding common shares (Refer to Net Loss per Share discussion in Note 2)	49,065,055	49,169,556	49,170,477	49,172,037
<b>Earnings per share:</b>				
Basic and diluted	\$ (0.23)	\$ (1.01)	\$ (0.60)	\$ (1.82)

## 21. Subsequent Events

### Common Stock At-The-Market Sales Program

During January 1, 2022 through March 15, 2022, we issued an aggregate of 131,798,802 shares of Common Stock under the Common ATM Program-3 at a weighted average price of \$0.554 per share, generating gross proceeds of \$73.0 million and net proceeds of \$70.3 million, after offering expenses.

A portion of the proceeds from the ATM Program-3 will be used to satisfy the cash payment under the terms of the Revolver Exchange Agreement as discussed below.

### Issuance of 2026 Notes

During January 1, 2022 through March 15, 2022, we sold \$81,500,000 in aggregate of principal amount of the 2026 Notes generating net proceeds of \$49.8 million.

A portion of the proceeds from the Issuance of the 2026 Notes will be used to satisfy the cash payment under the terms of the Revolver Exchange Agreement as discussed below.

### Repayments on BRCC Facility

During January 2022, we repaid \$22.7 million of outstanding principal amount under the BRCC Facility.

### Revolving Credit Facility Exchange and Prepayment

On March 7, 2022, subsidiaries of the Company entered into a Revolving Loan Exchange and Prepayment Agreement with Royal Bank of Canada, Credit Suisse AG, Cayman Islands Branch, KKR Corporate Lending LLC, Granite State Capital Master Fund LP, Credit Suisse Loan Funding LLC and Revolvercap Partners Fund LP (the “Revolver Exchange Agreement”) exchanging \$100.0 million of outstanding Revolving Credit Facility owed by Exela Intermediate LLC, a wholly owned subsidiary of the Company, upon the terms and subject to the conditions set forth in the Revolver Exchange Agreement, for (i) \$50.0 million in cash, and (ii) \$50.0 million of 2026 Notes.

The Company intends to use \$50.0 million of the proceeds raised in ATM Program-3 and from the issuance of 2026 Notes from January 1, 2022 to March 15, 2022 and issue \$50.0 million of the 2026 Notes to satisfy the exchange and prepayment obligation under the Revolver Exchange Agreement.

### Share Exchange Offer

On March 11, 2022, the Company announced the final results of its offer to exchange shares of its Common Stock for its 6.00% Series B Cumulative Convertible Perpetual Preferred Stock (the “Series B Preferred Stock”), with each 20 shares of Common Stock being exchanged for one share of Series B Preferred Stock having a liquidation preference of \$25.00 per share (the “Share Exchange Offer”). The Share Exchange Offer expired on March 10, 2022. Pursuant to the Share Exchange Offer, 18,006,560 shares of Common Stock were validly tendered for exchange and not withdrawn as of the expiration date. Based on the foregoing, Exela will exchange all such shares of Common Stock for a total of 900,328 shares of Series B Preferred Stock, without prorating. Exela will promptly issue the shares of Series B Preferred Stock to holders of validly tendered and accepted shares of Common Stock, which shares will be cancelled. Exela has filed an application to list the Series B Preferred Stock on the Nasdaq under the symbol “XelaP”.

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

None.

### **ITEM 9A. CONTROLS AND PROCEDURES**

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

Our management, with the participation of our Chief Executive Officer (“CEO”) and our Chief Financial Officer (“CFO”), has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) as of December 31, 2021. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Based upon that evaluation, as discussed below, our CEO and CFO have concluded that, as of the end of the period covered by this Annual Report, our disclosure controls and procedures were not effective because of the material weaknesses in internal control over financial reporting described below.

Notwithstanding such material weaknesses in internal control over financial reporting, our management, including our CEO and CFO, has concluded that our consolidated balance sheets as of and for the years ended December 31, 2021 and 2020 and the consolidated statements of operations, comprehensive loss, stockholders’ deficit, and cash flows for each of the years in the three-year period ended December 31, 2021, present fairly, in all material respects, our financial position, results of our operations and our cash flows for the periods presented in this Annual Report, in conformity with U.S. GAAP.

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

Management, under the supervision of the board of directors, is responsible for establishing and maintaining adequate “internal control over financial reporting,” as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP and includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. GAAP, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company’s assets that could have a material effect on the financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Because of its inherent limitations, a system of internal control over financial reporting may not prevent or detect misstatements.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Management, with participation of the CEO and CFO, under the oversight of our Board of Directors, assessed the effectiveness of our internal control over financial reporting as of December 31, 2021 using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control- Integrated Framework (2013)

(the “COSO 2013 Framework”). Based on its assessment, our management, including our CEO and CFO, has concluded that our internal control over financial reporting was not effective as of December 31, 2021 due to material weaknesses in our internal control over financial reporting described below.

The Company did not design, implement and operate effective process-level control activities related to order-to-cash (including revenue, customer deposits, accounts receivable and deferred revenue) and leases. The deficiencies related to the order-to-cash process also resulted in ineffective general information technology controls (GITCs) due to an incomplete understanding of the risks associated with relevant information technology (IT).

These deficiencies in process-level control activities were largely caused by an ineffective control environment as follows:

- The Company did not sufficiently establish structures, reporting lines and appropriate authorities and responsibilities; and
- The Company did not sufficiently attract, develop and retain competent resources and hold them accountable for their internal control responsibilities.

The deficiencies in the control environment also created deficiencies in the Company’s information and communication activities as follows:

- Relevant and quality information to support the functioning of internal controls was not consistently generated or used by the Company to support the operation of internal controls; and
- Internal communication of information necessary to support the functioning of internal control was not sufficient.

There were no material misstatements identified as a result of these control deficiencies. However, because there is a reasonable possibility that material misstatement of the consolidated financial statements would not be prevented or detected on a timely basis, we concluded the deficiencies represent material weaknesses in our internal control over financial reporting and our internal control over financial reporting was not effective as of December 31, 2021.

Our independent registered public accounting firm, KPMG LLP, who audited the consolidated financial statements included in this Annual Report on Form 10-K, issued an adverse opinion on the effectiveness of the Company’s internal control over financial reporting. KPMG LLP’s report appears on page 67 – 68 of this Annual Report on Form 10-K.

### **Remediation Plan**

We have identified and continue to implement several steps, as further described below, to remediate the material weaknesses described in this Item 9A and to enhance our overall control environment, control activities, and information and communication. We are committed to ensuring that our internal controls over financial reporting are designed and operating effectively.

- Further develop the detailed remediation plan, with appropriate executive sponsorship and with the assistance of third-party specialists, to specifically address the material weaknesses related to the control environment and information and communication.
- Establish adequate structures, reporting lines and appropriate authorities and responsibilities.
- Continue to hire, train, and retain individuals with appropriate skills and experience, assign responsibilities and hold individuals accountable for their roles related to internal control over financial reporting.
- For the order-to-cash and lease processes, enhance the design of existing control activities and implement additional process-level control activities, including related GITCs related to the order-to-cash process, and ensure they are operating effectively.
- Design and implement additional information and communications controls to ensure the ability to obtain and the use of relevant and quality information to allow the effective operation of control activities, including internal communication.



Although we intend to complete the remediation process as promptly as possible, we cannot at this time estimate how long it will take to remediate these material weaknesses. In addition, we may discover additional material weaknesses that require additional time and resources to remediate and we may decide to take additional measures to address the material weaknesses or modify the remediation steps described above. Until these weaknesses are remediated, we plan to continue to perform additional analyses and other procedures to ensure that our consolidated financial statements are prepared in accordance with U.S. GAAP.

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

We made the following material changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2021 to remediate previously reported material weaknesses in our internal control over financial reporting:

- Established enhanced financial reporting objectives to enable the identification and assessment of risks, including complying with applicable accounting standards.
- Implemented an enhanced risk assessment process to identify and assess risks of misstatement, including fraud risks, to ensure controls were designed and implemented to respond to those risks, and to identify and assess changes that could impact the system of internal controls.
- Selected, developed and performed ongoing evaluations to determine the components of internal control are present and functioning.
- Enhanced communication with external parties on matters affecting the functioning of internal control
- Timely evaluated and communicated internal control deficiencies as well as monitored related corrective actions.
- Designed, implemented and effectively operated process-level control activities related to journal entries, the preparation of consolidated financial statements, and significant unusual transactions.

There were no other changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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

None.

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

Not applicable.

### **PART III**

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

Information about our executive officers is contained in the section titled “Executive Officers” in Part I of this Annual Report.

The other information required by this Item will be included in our Proxy Statement for the 2022 Annual General Meeting of Shareholders under the captions “Director Nominees,” “Continuing Members of the Board of Directors,” “Additional Information Concerning the Board of Directors of the Company,” “Committees of the Board of Directors” and “Section 16(a) Beneficial Ownership Reporting Compliance,” which will be filed with the SEC no later than 120 days after the close of the fiscal year ended December 31, 2021 and is incorporated by reference in this Annual Report.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item will be included in our Proxy Statement for the 2022 Annual General Meeting of Shareholders under the captions “Executive Compensation” and “Director Remuneration,” which will be filed with the SEC no later than 120 days after the close of the fiscal year ended December 31, 2021 and is incorporated by reference in this Annual Report.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this Item will be included in our Proxy Statement for the 2022 Annual General Meeting of Shareholders under the caption “Security Ownership of Certain Beneficial Owners and Management” and “Securities Authorized for Issuance under Equity Compensation Plans,” which will be filed with the SEC no later than 120 days after the close of the fiscal year ended December 31, 2021 and is incorporated by reference in this Annual Report.

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

The information required by this Item will be included in our Proxy Statement for the 2022 Annual General Meeting of Shareholders under the captions “Certain Relationships and Related Party Transactions” and “Director Independence,” which will be filed with the SEC no later than 120 days after the close of the fiscal year ended December 31, 2021 and is incorporated by reference in this Annual Report.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this Item will be included in our Proxy Statement for the 2022 Annual General Meeting of Shareholders under the caption “Independent Registered Public Accounting Firm Fees” which will be filed with the SEC no later than 120 days after the close of the fiscal year ended December 31, 2021 and is incorporated by reference in this Annual Report.

**ITEM 15. EXHIBIT AND FINANCIAL STATEMENT SCHEDULES**

**a) (1) Financial Statements**

<a href="#">Report of Independent Registered Public Accounting Firm</a>	65
<a href="#">Consolidated Balance Sheets as of December 31, 2021 and 2020</a>	69
<a href="#">Consolidated Statements of Operations for the years ended December 31, 2021, 2020, and 2019</a>	70
<a href="#">Consolidated Statements of Comprehensive Loss for the years ended December 31, 2021, 2020, and 2019</a>	71
<a href="#">Consolidated Statements of Stockholders' Deficit for the years ended December 31, 2021, 2020, and 2019</a>	72
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2021, 2020, and 2019</a>	75
<a href="#">Notes to the Consolidated Financial Statements</a>	76

**(a)(3) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>	<b>Filed or Furnished Herewith</b>
2.1	<a href="#">Novitex Business Combination Agreement, dated as of February 21, 2017, by and among Quinpario Acquisition Corp. 2, Quinpario Merger Sub I, Inc., Quinpario Merger Sub II, Inc., Novitex Holdings, Inc., SourceHOV Holdings, Inc., Novitex Parent, L.P., HOVS LLC and HandsOn Fund 4 I, LLC (2)</a>	
3.1	<a href="#">Restated Certificate of Incorporation, dated July 12, 2017 (4)</a>	
3.2	<a href="#">Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Exela Technologies, Inc., effective January 25, 2021 (13)</a>	
3.3	<a href="#">Second Amended and Restated Bylaws, dated November 6, 2019 (9)</a>	
3.4	<a href="#">Certificate of Designations, Preferences, Rights and Limitations of Series A Perpetual Convertible Preferred Stock (4)</a>	
3.5	<a href="#">Certificate of Amendment to Bylaws of Exela Technologies, Inc., dated October 11, 2021 (18)</a>	
3.6	<a href="#">Certificate of Amendment No. 2 to Bylaws of Exela Technologies, Inc., dated December 27, 2021 (21)</a>	
3.7	<a href="#">Waiver of Bylaws (5)</a>	
4.1	<a href="#">Specimen Common Stock Certificate (1)</a>	
4.2	<a href="#">Specimen Warrant Certificate (1)</a>	
4.3	<a href="#">Form of Warrant Agreement between Continental Stock Transfer &amp; Trust Company and the Registrant (1)</a>	
4.4	<a href="#">Form of Common Stock Purchase Warrant (14)</a>	
4.5	<a href="#">Indenture, dated July 12, 2017, by and among Exela Intermediate LLC and Exela Finance Inc. as Issuers, the Subsidiary Guarantors set forth therein and Wilmington Trust, National Association, as Trustee (4)</a>	
4.6	<a href="#">First Supplemental Indenture, dated July 12, 2017, by and among Exela Intermediate LLC and Exela Finance Inc., as Issuers, the Subsidiary Guarantors set forth therein and Wilmington Trust, National Association, as Trustee (4)</a>	

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Exhibit No.	Description	Filed or Furnished Herewith
4.7	<a href="#">Second Supplemental Indenture, dated May 20, 2020, by and among Exela Intermediate LLC and Exela Finance Inc., as Issuers, Merco Holdings, LLC as Subsidiary Guarantor and Wilmington Trust, National Association, as Trustee. (11)</a>	
4.8	<a href="#">Third Supplemental Indenture, dated as of December 1, 2021, by and among Exela Intermediate LLC, Exela Finance Inc. and Wilmington Trust, National Association, as trustee (20)</a>	
4.9	<a href="#">Indenture, dated December 9, 2021, by and among Exela Intermediate LLC and Exela Finance Inc. as Issuers, the Subsidiary Guarantors set forth therein and U.S.Bank, National Association, as Trustee</a>	Filed
4.10	<a href="#">Supplemental Indenture, dated December 20, 2021, by and among Exela Intermediate LLC and Exela Finance Inc. as Issuers, and U.S. Bank, National Association, as Trustee</a>	Filed
4.11	<a href="#">Second Supplemental Indenture, dated February 24, 2022, by and among Exela Intermediate LLC and Exela Finance Inc. as Issuers, and U.S. Bank, National Association, as Trustee</a>	Filed
4.12	<a href="#">At Market Issuance Sales Agreement, dated September 30, 2021, by and among Exela Technologies, Inc. and B. Riley Securities, Inc., BNP Paribas Securities Corp., Cantor Fitzgerald &amp; Co., Mizuho Securities USA LLC and Needham &amp; Company, LLC (17)</a>	
4.13	<a href="#">Description of Securities (1)</a>	
10.1	<a href="#">Modification Agreement, dated as of June 15, 2017 (3)</a>	
10.2	<a href="#">Amended &amp; Restated Registration Rights Agreement, dated July 12, 2017, by and among the Company and the Holders (4)</a>	
10.3	<a href="#">Exela Technologies, Inc. Director Nomination Agreement, dated July 12, 2017, by and among the Company, the HGM Group and Ex-Sigma 2 LLC (4)</a>	
10.4	<a href="#">Securities Purchase Agreement (14)</a>	
10.5	<a href="#">Registration Rights Agreement (14)</a>	
10.6	<a href="#">First Lien Credit Agreement, dated July 12, 2017, by and among Exela Intermediate Holdings LLC, Exela Intermediate LLC, the Lenders Party Thereto, Royal Bank of Canada, RBC Capital Markets, Credit Suisse Securities (USA) LLC, Natixis, New York Branch and KKR Capital Markets LLC (4)</a>	
10.7	<a href="#">First Amendment to First Lien Credit Agreement, dated July 13, 2018, by and among Exela Intermediate Holdings LLC, Exela Intermediate LLC, the Lenders Party Thereto, Royal Bank of Canada, RBC Capital Markets, Credit Suisse Securities (USA) LLC, Natixis, New York Branch and KKR Capital Markets LLC (6)</a>	
10.8	<a href="#">Second Amendment to First Lien Credit Agreement, dated as of April, 16, 2019, by and among Exela Intermediate Holdings LLC, Exela Intermediate, LLC, each Subsidiary Loan Party listed on the signature pages thereto, Royal Bank of Canada, as administrative agent, and each of the lenders party thereto. (7)</a>	
10.9	<a href="#">Transition Agreement, dated as of May 15, 2020, by and between Exela Technologies, Inc. and James G. Reynolds.(11)</a>	
10.10	<a href="#">Third Amendment to First Lien Credit Agreement and First Amendment to Collateral Agency and Security Agreement (First Lien), dated as of May 15, 2020, by and among Exela Intermediate Holdings LLC, Exela Intermediate LLC, each Subsidiary Loan Party thereto, the Lenders party thereto and Wilmington Savings Fund Society, FSB (10)</a>	
10.11	<a href="#">Fourth Amendment to First Lien Credit Agreement, dated as of December 9, 2021</a>	Filed
10.12	<a href="#">Revolving Loan Exchange and Prepayment Agreement, dated March 7, 2022, by and among Exela Intermediate Holdings, LLC, Exela Intermediate LLC, and the revolving lenders party thereto</a>	Filed

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Exhibit No.	Description	Filed or Furnished Herewith
10.13	<a href="#">Loan and Security Agreement, dated as of December 10, 2020, by and among the Borrower, the Company, as initial servicer, Alter Domus (US) LLC, as administrative agent and the lenders from time to time party thereto.</a> (12)	
10.14	<a href="#">First Tier Receivables Purchase and Sale Agreement, dated as of December 17, 2020, by and among Parent SPE, and certain other indirect, wholly-owned subsidiaries of the Company listed therein, and the Company, as initial servicer.</a> (12)	
10.15	<a href="#">Second Tier Receivables Purchase and Sale Agreement, dated as of December 17, 2020, by and among, the Borrower, the Parent SPE and the Company, as initial servicer, pursuant to which the Parent SPE has sold or contributed and will sell or contribute to the Borrower certain receivables and related assets in consideration for a combination of cash and equity in the Borrower SPE</a> (12)	
10.16	<a href="#">Sub-Servicing Agreement, dated as of December 17, 2020, by and among the Company, as initial servicer, and BancTec, Inc., SourceHOV, LLC, Economic Research Services, Inc., Exela Enterprise Solutions, Inc., SourceHOV Healthcare, Inc., United Information Services, Inc., HOV Enterprise Services, Inc., HOV Services, Inc., HOV Services, LLC, J&amp;B Software, Inc., Novitex Government Solutions, LLC, Regulus Group II LLC, Regulus Group LLC, Regulus Integrated Solutions LLC, SourceCorp BPS Inc., Sourcecorp Management, Inc., as sub-servicers.</a> (12)	
10.17	<a href="#">Pledge and Guaranty Agreement, dated as of December 10, 2020, between Parent SPE and Alter Domus (US) LLC.</a> (12)	
10.18	<a href="#">Performance Guaranty, dated as of December 17, 2020, between the Company, as performance guarantor, and Alter Domus (US) LLC, as the administrative agent.</a> (12)	
10.19	<a href="#">Second Amendment to Loan Agreement, dated April 11, 2021</a> (15)	
10.20	<a href="#">Secured Promissory Note dated as of November 17, 2021 by and between GP 2XCV LLC and B. Riley Commercial Capital, LLC.</a> (19)	
10.21	<a href="#">Amended and Restated Exela Technologies Inc. 2018 Stock Incentive Plan.</a> (22)	
10.22	<a href="#">Form of Option Grant Notice and Agreement under the Exela Technologies Inc. 2018 Stock Incentive Plan.</a> (8)	
10.23	<a href="#">Form of Restricted Stock Unit Grant and Agreement under the Exela Technologies Inc. 2018 Stock Incentive Plan.</a> (8)	
10.24	<a href="#">Exela Technologies, Inc. Executive Officer Annual Bonus Plan.</a> (9)	
10.25	<a href="#">Letter Agreement dated as of September 14, 2021 by and between Exela Technologies, Inc. and Par Chadha.</a> (16)	
21.1	<a href="#">Subsidiaries of Exela Technologies Inc.</a>	Filed
23.1	<a href="#">Consent of KPMG LLP</a>	Filed
31.1	<a href="#">Certification of the Principal Executive Officer required by Rule 13a-14(a) and Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002</a>	Filed
31.2	<a href="#">Certification of the Principal Financial and Accounting Officer required by Rule 13a-14(a) and Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002</a>	Filed
32.1	<a href="#">Certification of the Principal Executive Officer required by 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act of 2002</a>	Furnished
32.2	<a href="#">Certification of the Principal Financial and Accounting Officer required by 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act of 2002</a>	Furnished

<b>Exhibit No.</b>	<b>Description</b>	<b>Filed or Furnished Herewith</b>
101.INS	Inline XBRL Instance Document	Filed
101.SCH	Inline XBRL Taxonomy Extension Schema	Filed
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase	Filed
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase	Filed
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase	Filed
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase	Filed
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101)	

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- (1) Incorporated by reference to the Registrant's Registration Statement on Form S-1 (SEC File No. 333-198988).
  - (2) Incorporated by reference to the Registrant's Current Report on Form 8-K filed on February 22, 2017.
  - (3) Incorporated by reference to the Registrants' Current Report on Form 8-K, filed on June 21, 2017.
  - (4) Incorporated by reference to the Registrants' Current Report on Form 8-K, filed on July 18, 2017.
  - (5) Incorporated by reference to the Registrants' Current Report on Form 8-K, filed on December 21, 2017.
  - (6) Incorporated by reference to the Registrants' Current Report on Form 8-K, filed on July 17, 2018.
  - (7) Incorporated by reference to the Registrants' Current Report on Form 8-K, filed on April 17, 2019.
  - (8) Incorporated by reference to the Registrants' Quarterly Report on Form 10-Q, filed on May 10, 2019.
  - (9) Incorporated by reference to the Registrants' Quarterly Report on Form 10-Q, filed on November 12, 2019.
  - (10) Incorporated by reference to the Registrants' Current Report on Form 8-K, filed on May 21, 2020.
  - (11) Incorporated by reference to the Registrants' Quarterly Report on Form 10-Q, filed on August 10, 2020.
  - (12) Incorporated by reference to the Registrants' Current Report on Form 8 K, filed on December 17, 2021.
  - (13) Incorporated by reference to the Registrants' Current Report on Form 8 K, filed on January 25, 2021.
  - (14) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on March 19, 2021.
  - (15) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on April 15, 2021.
  - (16) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on September 16, 2021.
  - (17) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on September 30, 2021.
  - (18) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on October 12, 2021.
  - (19) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on November 18, 2021.
  - (20) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on December 2, 2021.
  - (21) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed on December 27, 2021.
  - (22) Incorporated by reference to the Registrant's Registration Statement on Form S-8, filed on February 16, 2022.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: By: /s/ Ronald Cogburn  
March 16, 2022 Ronald Cogburn, Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Dated: By: /s/ Ronald Cogburn  
March 16, 2022 Ronald Cogburn, Chief Executive Officer  
(Principal Executive Officer) and Director

Dated: By: /s/ Shrikant Sortur  
March 16, 2022 Shrikant Sortur, Chief Financial Officer  
(Principal Financial Officer and Principal Accounting Officer)

Dated: By: /s/ Par Chadha  
March 16, 2022 Par Chadha, Executive Chairman

Dated: By: /s/ Martin P. Akins  
March 16, 2022 Martin P. Akins, Director

Dated: By: /s/ Marc A. Beilinson  
March 16, 2022 Marc A. Beilinson, Director

Dated: By: /s/ Sharon Chadha  
March 16, 2022 Sharon Chadha, Director

Dated: By: /s/ J. Coley Clark  
March 16, 2022 J. Coley Clark, Director

Dated: By: /s/ John H. Rexford  
March 16, 2022 John H. Rexford, Director

Dated: By: /s/ James G. Reynolds  
March 16, 2022 James G. Reynolds, Director

Dated: By: /s/ William L. Transier  
March 16, 2022 William L. Transier, Director

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**EXELA INTERMEDIATE LLC,**  
as Company

**EXELA FINANCE INC.,**  
as Co-Issuer

and the Subsidiary Guarantors party hereto from time to time

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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**11.500% FIRST-PRIORITY SENIOR SECURED NOTES DUE 2026**

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**INDENTURE**

**Dated as of December 9, 2021**

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Appendix A – Provisions Relating to Initial Notes and Additional Notes

**EXHIBIT INDEX**

Exhibit A – Form of Initial Note

Exhibit B – Form of Transferee Letter of Representation

Exhibit C – Form of Supplemental Indenture

INDENTURE, dated as of December 9, 2021 (as amended, supplemented or otherwise modified from time to time, this “Indenture”), by and among EXELA INTERMEDIATE LLC, a Delaware limited liability company (the “Company”), EXELA FINANCE INC., a Delaware corporation (the “Co-Issuer” and, together with Company, the “Issuers”), the Subsidiary Guarantors (as defined below) party hereto from time to time and U.S. Bank National Association, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the holders of (i) \$982,598,000 aggregate principal amount of the Issuers’ 11.500% First-Priority Senior Secured Notes due 2026 issued on the date hereof (the “Initial Notes”) and (ii) Additional Notes issued from time to time (together with the Initial Notes, the “Notes”):

## ARTICLE I

### DEFINITIONS AND INCORPORATION BY REFERENCE

#### Section 1.01 Definitions.

“Acquired Indebtedness” means, with respect to any specified Person:

- (1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, and
- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

Acquired Indebtedness will be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of such assets.

“Additional First-Priority Secured Party” means the holders of any Other First-Priority Obligations that are Incurred after the Issue Date.

“Additional Notes” means the Notes issued under the terms of this Indenture subsequent to the Issue Date.

“Additional Refinancing Amount” means, in connection with the Incurrence of any Refinancing Indebtedness, the aggregate principal amount of additional Indebtedness, Disqualified Stock or Preferred Stock Incurred to pay accrued and unpaid interest, premiums (including tender premiums), expenses, defeasance costs and fees in respect thereof.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to

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any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“After-Acquired Property” means any property or assets (other than Excluded Property) of the Company or any Subsidiary Guarantor that secures or is required to secure any First-Priority Obligations (including any Secured Bank Indebtedness) that is not already subject to the Lien under the Security Documents.

“Applicable Premium” means, with respect to any Note on any applicable redemption date, as determined by the Issuers, the greater of:

(1) 1% of the then outstanding principal amount of the Note; and

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note, at December 1, 2022 (such redemption price being set forth in Paragraph 5 of the Note) *plus* (ii) all required interest payments due on the Note through December 1, 2022 (excluding accrued but unpaid interest), computed using a discount rate equal to the Treasury Rate as of such redemption date *plus* 50 basis points; over

(b) the then outstanding principal amount of the Note.

“Asset Sale” means:

(1) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets (including by way of Sale/Leaseback Transactions) outside the ordinary course of business of the Company or any Restricted Subsidiary (each referred to in this definition as a “disposition”); or

(2) the issuance or sale of Equity Interests (other than directors’ qualifying shares and shares issued to foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Company or another Restricted Subsidiary) (whether in a single transaction or a series of related transactions),

in each case other than:

(a) (i) a disposition of Cash Equivalents or Investment Grade Securities or obsolete, damaged or worn out property or equipment in the ordinary course of business and (ii) any dispositions of Investments in joint ventures to the extent required by, or made pursuant to buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(b) the disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to Section 5.01 or any disposition that constitutes a Change of Control;

(c) any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 4.04;

(d) any disposition of assets of the Company or any Restricted Subsidiary or issuance or sale of Equity Interests of the Company or any Restricted Subsidiary, which assets or Equity Interests so disposed or issued have an aggregate Fair Market Value (as determined in good faith by the Company) of less than \$75 million;

(e) any disposition of property or assets, or the issuance of securities, by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;

(f) any exchange of assets (including a combination of assets and Cash Equivalents) for assets related to a Similar Business of comparable or greater market value or usefulness to the business of the Company and the Restricted Subsidiaries as a whole, as determined in good faith by the Company;

(g) foreclosure or any similar action with respect to any property or other asset of the Company or any of the Restricted Subsidiaries;

(h) any disposition of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(i) the lease, assignment or sublease of any real or personal property in the ordinary course of business;

(j) any sale of inventory or other assets in the ordinary course of business;

(k) any grant in the ordinary course of business of any license or sublicense of patents, trademarks, know-how or any other intellectual property;

(l) any disposition (including by capital contribution), pledge, factoring, transfer or sale of (i) Securitization Assets to any Special Purpose Securitization Subsidiary or otherwise any pledge, factoring, transfer or sale in connection with any Permitted Securitization Financing, and (ii) any other Securitization Assets subject to Liens securing Permitted Securitization Financings;

(m) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after the Issue Date, including any Sale/Leaseback Transaction or Permitted Securitization Financing;

(n) dispositions in connection with Permitted Liens;

(o) any disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Company or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired or from whom such Restricted Subsidiary acquired its business and assets (having been newly

formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(p) the sale of any property in a Sale/Leaseback Transaction within twelve months of the acquisition of such property;

(q) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(r) any surrender, expiration or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind;

(s) [reserved];

(t) to the extent constituting an Asset Sale, any termination, settlement or extinguishment of Hedging Obligations; and

(u) any sale, transfer or disposition of Claims Administration Investments; provided that the Net Proceeds thereof received by the Company or any Restricted Subsidiary are used to make additional Claims Administration Investments or to repay any outstanding Claims Administration Indebtedness prior to being used for any other purpose.

“Authorized Representative” means (i) in the case of the Notes, the Trustee, (ii) in the case of the Credit Agreement, the administrative agent under the Credit Agreement, and (iii) in the case of any Series of Other First-Priority Obligation that become subject to the First Lien Intercreditor Agreement, the authorized representative (and any successor thereto) named for such Series in the applicable joinder agreement.

“Bank Indebtedness” means any and all amounts payable under or in respect of (a) the Credit Agreement and the other Credit Agreement Documents, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time (including after termination of the Credit Agreement), including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof, including principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuers whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and all other amounts payable thereunder or in respect thereof (except to the extent any such refinancing, replacement or restructuring is designated by the Company to not be included in this definition of “Bank Indebtedness”) and (b) whether or not the Indebtedness referred to in clause (a) remains outstanding, if designated by the Company to be included in this definition, one or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, reserve-based loans, securitization or



receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances), or (C) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

“Bankruptcy Code” means Title 11 of the United States Code.

“Board of Directors” means, as to any Person, the board of directors or managers or other governing body, as applicable, of such Person or any direct or indirect parent of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof.

“Business Day” means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York City or the place of payment.

“Capital Stock” means:

- (1) in the case of a corporation, corporate stock or shares;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP; *provided* that obligations of the Company or its Restricted Subsidiaries, or of a special purpose or other entity not consolidated with the Company and its Restricted Subsidiaries, either existing on the Issue Date or created thereafter that (a) initially were not included on the consolidated balance sheet of the Company as capital lease obligations and were subsequently recharacterized as capital lease obligations or, in the case of such a special purpose or other entity becoming consolidated with the Company and its Restricted Subsidiaries were required to be characterized as capital lease obligations upon such consolidation, in either case, due to a change in accounting treatment or otherwise, or (b) did not exist on the Issue Date and were required to be characterized as capital lease obligations but would not have been required to be treated as capital lease obligations on the Issue Date had they existed at that time, shall for all purposes not be treated as Capitalized Lease Obligations or Indebtedness.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person and such Restricted Subsidiaries.

“Cash Equivalents” means:

- (1) U.S. dollars, pounds sterling, euros, the national currency of any member state in the European Union or such local currencies held by an entity from time to time in the ordinary course of business;
- (2) securities issued or directly and fully guaranteed or insured by the U.S. government or any country that is a member of the European Union or any agency or instrumentality thereof in each case maturing not more than two years from the date of acquisition;
- (3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances, in each case with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of \$250.0 million and whose long-term debt is rated “A” or the equivalent thereof by Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency);
- (4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;
- (5) commercial paper issued by a corporation (other than an Affiliate of the Company) rated at least “A-1” or the equivalent thereof by Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within one year after the date of acquisition;
- (6) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;
- (7) Indebtedness issued by Persons (other than the Investors or any of the Investor Affiliates) with a rating of “A” or higher from S&P or “A-2” or higher from Moody’s (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;
- (8) investment funds investing at least 95% of their assets in securities of the types described in clauses (1) through (7) above; and

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.

“Cash Management Agreement” means any agreement to provide to the Company or any Restricted Subsidiary cash management services for collections, treasury management services (including controlled disbursement, overdraft, automated clearing house fund transfer services, return items and interstate depository network services), any demand deposit, payroll, trust or operating account relationships, commercial credit cards, merchant card, purchase or debit cards, non-card e-payables services, and other cash management services, including electronic funds transfer services, lockbox services, stop payment services and wire transfer services.

“cash management services” means cash management services for collections, treasury management services (including controlled disbursement, overdraft, automated clearing house fund transfer services, return items and interstate depository network services), any demand deposit, payroll, trust or operating account relationships, commercial credit cards, merchant card, purchase or debit cards, non-card e-payables services, and other cash management services, including electronic funds transfer services, lockbox services, stop payment services and wire transfer services.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change of Control” means the occurrence of either of the following:

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Company and its Subsidiaries, taken as a whole, to a Person other than any of the Permitted Holders; or

(2) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than any of the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation, amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the Voting Stock of the Company.

For purposes of this definition, (i) no person or “group” will be deemed to have beneficial ownership of any securities that such person or “group” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that

has not yet occurred and (ii) the provisions of Rule 13d-3(b) shall be disregarded for all purposes of determining beneficial ownership.

“Claims Administration Arrangements” means any and all arrangements entered into by the Company or any of its Restricted Subsidiaries and any Claims Administration Bank whereby short-term loans (which loans shall be secured solely by Claim Administration Liens) are made by such Claims Administration Bank to the Company or any of its Restricted Subsidiaries; provided that the proceeds of such loans are deposited in one or more segregated deposit or securities accounts and are solely used to purchase Claims Administration Investments (which shall be held in such segregated accounts) and pay transaction costs in connection therewith.

“Claims Administration Bank” means any third-party financial institution meeting the qualifications specified in clause (3) of the definition of “Cash Equivalents” that is designated by the Company or any of its Restricted Subsidiaries to hold and distribute certain legal settlement funds administered by the Company or its Restricted Subsidiaries in connection with the Company’s claims administration business.

“Claims Administration Indebtedness” means Indebtedness for borrowed money of the Company or any of its Restricted Subsidiaries in favor of the Claims Administration Bank in respect of loans made pursuant to Claims Administration Arrangements.

“Claims Administration Investments” means Cash Equivalents invested with proceeds of Claims Administration Indebtedness.

“Claims Administration Liens” means Liens in favor of the Claims Administration Bank on Claims Administration Investments and related segregated deposit and securities accounts securing Claims Administration Indebtedness solely to the extent the amount of such Claims Administration Investment equals or exceeds the amount of such Claims Administration Indebtedness.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all property subject or purported to be subject, from time to time, to a Lien under any Security Documents.

“Collateral Agreement” means the Collateral Agreement (First Lien) among the Issuers, each Subsidiary Guarantor and the First-Priority Collateral Agent, entered into on the Issue Date, as may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms and in accordance with this Indenture.

“Common Collateral” means, at any time, Collateral in which the holders of two or more Series of First-Priority Obligations (or their respective Authorized Representatives) hold a valid and perfected security interest at such time. If more than two Series of First-Priority Obligations are outstanding at any time and the holders of less than all Series of First-Priority Obligations hold a valid and perfected security interest in any Collateral at such time, then such Collateral shall constitute Common Collateral for those Series of First-Priority Obligations that hold a valid security interest in such Collateral at such time and shall not constitute Common

Collateral for any Series which does not have a valid and perfected security interest in such Collateral at such time.

“Consolidated Depreciation and Amortization Expense” means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including, without limitation, the amortization of intangible assets, deferred financing fees, capitalized contract incentives, Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including the interest component of Capitalized Lease Obligations and net payments and receipts (if any) pursuant to interest rate Hedging Obligations and excluding amortization of deferred financing fees and original issue discount, debt issuance costs, commissions, fees and expenses, expensing of any bridge, commitment or other financing fees and non-cash interest expense attributable to movement in mark to market valuation of Hedging Obligations or other derivatives (in each case permitted hereunder) under GAAP); *plus*

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *minus*

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis; *provided, however*, that:

(1) any net after-tax extraordinary, nonrecurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses or charges, any severance expenses, relocation expenses, restructuring expenses, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, any expenses related to any New Project or any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternate uses and fees, expenses or charges relating to facility closing costs, facility rebranding costs, acquisition integration costs, facility opening costs, project and contract start-up costs, business optimization costs, recruiting costs, signing, retention or completion bonuses, expenses or charges related to any issuance of Equity Interests, Investment, acquisition, disposition, recapitalization or Incurrence, issuance, repayment, refinancing, amendment or modification of Indebtedness (in each case, whether or not successful), and any fees, expenses, charges or change in control payments related to the Transactions (including any costs relating to

auditing prior periods, any transition-related expenses, and transaction expenses incurred before, on or after the Issue Date), in each case, shall be excluded;

(2) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person and such Subsidiaries and including, without limitation, the effects of adjustments to (A) deferred rent, (B) Capitalized Lease Obligations or other obligations or deferrals attributable to capital spending funds with suppliers or (C) any other deferrals of income) in amounts required or permitted by GAAP, resulting from the application of purchase accounting or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded;

(3) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period;

(4) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations or fixed assets and any net after-tax gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations or fixed assets shall be excluded;

(5) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by management of the Company) shall be excluded;

(6) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness, Hedging Obligations or other derivative instruments shall be excluded;

(7) (a) the Net Income for such period of any Person that is not a Subsidiary of such Person, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period and (b) the Net Income for such period shall include any dividend, distribution or other payment in cash (or to the extent converted into cash) received by the referent Person or a Subsidiary thereof (other than an Unrestricted Subsidiary of such referent Person) from any Person in excess of, but without duplication of, the amounts included in subclause (a);

(8) solely for the purpose of determining the amount available for Restricted Payments under clause (1) of the definition of "Cumulative Credit," the Net Income for such period of any Restricted Subsidiary (other than any Subsidiary Guarantor) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restrictions with respect to the payment of dividends or similar distributions have been legally

waived; *provided* that the Consolidated Net Income of such Person shall be increased by the amount of dividends or other distributions or other payments actually paid in cash (or converted into cash) by any such Restricted Subsidiary to such Person, to the extent not already included therein;

(9) an amount equal to the amount of Tax Distributions actually made to any parent or equity holder of such Person in respect of such period in accordance with Section 4.04(b)(xii) shall be included as though such amounts had been paid as income taxes directly by such Person for such period;

(10) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles and other fair value adjustments arising pursuant to GAAP shall be excluded;

(11) any non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded;

(12) any (a) non-cash compensation charges, (b) costs and expenses after the Issue Date related to employment of terminated employees, or (c) costs or expenses realized in connection with or resulting from stock appreciation or similar rights, stock options or other rights existing on the Issue Date of officers, directors and employees, in each case of such Person or any Restricted Subsidiary, shall be excluded;

(13) accruals and reserves that are established or adjusted within 12 months after the Issue Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded;

(14) (a)(i) the non-cash portion of “straight-line” rent expense shall be excluded, (ii) the cash portion of “straight-line” rent expense which exceeds the amount expensed in respect of such rent expense shall be included, (iii) the non-cash amortization of tenant allowances shall be excluded, (iv) cash received from landlords for tenant allowances shall be included and (v) to the extent not already included in Net Income, the cash portion of sublease rentals received shall be included (for the avoidance of doubt, the net effect of the adjustments in this clause (14)(a) as well as any related adjustments pursuant to clause (2) above shall be to compute rent expense and rental income on a cash basis for purposes of determining Consolidated Net Income) and (b) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded;

(15) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from hedging transactions for currency exchange risk, shall be excluded;

(16) (a) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied

by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded and (b) amounts estimated in good faith to be received from insurance in respect of lost revenues or earnings in respect of liability or casualty events or business interruption shall be included (with a deduction for amounts actually received up to such estimated amount to the extent included in Net Income in a future period);

(17) Capitalized Software Expenditures shall be excluded;

(18) non-cash charges for deferred tax asset valuation allowances shall be excluded;

(19) any other costs, expenses or charges resulting from facility closures or sales, including income (or losses) from such facility closures or sales, shall be excluded;

(20) any deductions attributable to minority interests shall be excluded;

and

(21) any gain, loss, income, expense or charge resulting from the application of any LIFO shall be excluded.

Notwithstanding the foregoing, for the purpose of Section 4.04 only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of assets from Unrestricted Subsidiaries or Restricted Subsidiaries to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under Section 4.04 pursuant to clauses (4) and (5) of the definition of "Cumulative Credit."

"Consolidated Non-Cash Charges" means, with respect to any Person for any period, the non-cash expenses (other than Consolidated Depreciation and Amortization Expense) of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP; *provided* that if any such non-cash expenses represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA in such future period to the extent paid, but excluding from this proviso, for the avoidance of doubt, amortization of a prepaid cash item that was paid in a prior period.

"Consolidated Taxes" means, with respect to any Person for any period, the provision for taxes based on income, profits or capital, including, without limitation, state, franchise, property and similar taxes, foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) and any Tax Distributions taken into account in calculating Consolidated Net Income.

"Consolidated Total Indebtedness" means, as of any date of determination, an amount equal to the sum (without duplication) of (1) the aggregate principal amount of all outstanding Indebtedness of the Company and the Restricted Subsidiaries (excluding letters of



credit or bank guarantees, to the extent undrawn, cash collateralized or backstopped) consisting of Capitalized Lease Obligations and Indebtedness for borrowed money, plus (2) the aggregate amount of all outstanding Disqualified Stock of the Company and the Restricted Subsidiaries and all Preferred Stock of the Restricted Subsidiaries, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences, in each case determined on a consolidated basis in accordance with GAAP.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,
- (2) to advance or supply funds:
  - (a) for the purchase or payment of any such primary obligation; or
  - (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Corporate Trust Office” means the designated office of the Trustee in the United States of America at which at any time its corporate trust business shall be administered, or such other address as the Trustee may designate from time to time by notice to the holders and the Issuers, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the holders and the Issuers).

“Credit Agreement” means (i) the First Lien Credit Agreement, dated as of July 12, 2017, among the Company, the guarantors named therein, the financial institutions named therein and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof (except to the extent any such refinancing, replacement or restructuring is designated by the Company to not be included in this definition of “Credit Agreement”) and (ii) whether or not the credit agreement referred to in clause (i) remains outstanding, if designated by the Company to be included in this definition of “Credit Agreement,” one or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, securitization or receivables financing (including through the

sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances), or (C) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

“Credit Agreement Documents” means the collective reference to any Credit Agreement, any notes issued pursuant thereto and the guarantees thereof, and the collateral documents relating thereto, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified, in whole or in part, from time to time.

“Cumulative Credit” means the sum of (without duplication):

(1) (i) \$50 million plus (ii) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from April 1, 2017 to the end of the Company's most recently ended fiscal quarter for which financial statements have been delivered to the Trustee at the time of such Restricted Payment (or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit), *plus*

(2) 100% of the aggregate net proceeds, including cash and the Fair Market Value (as determined in good faith by the Company) of property other than cash, received by the Company after the Issue Date (other than net proceeds to the extent such net proceeds have been used to incur Indebtedness, Disqualified Stock, or Preferred Stock pursuant to Section 4.03(b)(xiii)) from the issue or sale of Equity Interests of the Company or any direct or indirect parent entity of the Company (excluding the Refunding Capital Stock (as defined below), Designated Preferred Stock, Excluded Contributions, and Disqualified Stock), including Equity Interests issued upon exercise of warrants or options (other than an issuance or sale to the Company or a Restricted Subsidiary), *plus*

(3) 100% of the aggregate amount of contributions to the capital of the Company received in cash and the Fair Market Value (as determined in good faith by the Company) of property other than cash after the Issue Date (other than the Excluded Contributions, Refunding Capital Stock, Designated Preferred Stock, and Disqualified Stock and other than contributions to the extent such contributions have been used to Incur Indebtedness, Disqualified Stock, or Preferred Stock pursuant to Section 4.03(b)(xiii)), *plus*

(4) 100% of the principal amount of any Indebtedness, or the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock of the Company or any Restricted Subsidiary issued after the Issue Date (other than Indebtedness or Disqualified Stock issued to a Restricted Subsidiary) which has been converted into or exchanged for Equity Interests in the Company (other than Disqualified Stock) or any direct or indirect parent of the Company (*provided*, in the case of any such parent, such Indebtedness or Disqualified Stock is retired or extinguished), *plus*

(5) 100% of the aggregate amount received by the Company or any Restricted Subsidiary in cash and the Fair Market Value (as determined in good faith by the Company) of property other than cash received by the Company or any Restricted Subsidiary from:

(A) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company and the Restricted Subsidiaries and from repurchases and redemptions of such Restricted Investments from the Company and the Restricted Subsidiaries by any Person (other than the Company or any Restricted Subsidiary) and from repayments of loans or advances, and releases of guarantees, which constituted Restricted Investments (other than in each case to the extent that the Restricted Investment was made pursuant to Section 4.04(b)(vii)),

(B) the sale (other than to the Company or a Restricted Subsidiary) of the Capital Stock of an Unrestricted Subsidiary, or

(C) a distribution or dividend from an Unrestricted Subsidiary, *plus*

(6) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Company or a Restricted Subsidiary, the Fair Market Value (as determined in good faith by the Company) of the Investment of the Company or the Restricted Subsidiaries in such Unrestricted Subsidiary (which, if the Fair Market Value of such Investment shall exceed \$40 million, shall be determined by the Board of Directors of the Company) at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) (other than in each case to the extent that the designation of such Subsidiary as an Unrestricted Subsidiary was made pursuant to Section 4.04(b)(vii) or constituted a Permitted Investment).

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

“Designated Non-cash Consideration” means the Fair Market Value (as determined in good faith by the Company) of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, setting forth such valuation, less the amount of Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Designated Preferred Stock” means Preferred Stock of the Company or any direct or indirect parent of the Company (other than Disqualified Stock), that is issued for cash (other than to the Company or any of its Subsidiaries or an employee stock ownership plan or trust established by the Company or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate, on the issuance date thereof.

“Discharge of First-Priority Obligations” means, except to the extent otherwise provided in the First Lien Intercreditor Agreement with respect to the reinstatement or continuation of any First-Priority Obligation under certain circumstances, with respect to any

Common Collateral and any Series of First-Priority Obligations, the date on which such Series of First-Priority Obligations is no longer secured by, and no longer required to be secured by, such Common Collateral.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event:

- (1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale),
- (2) is convertible or exchangeable for Indebtedness or Disqualified Stock of such Person or any of its Restricted Subsidiaries, or
- (3) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control or asset sale),

in each case prior to 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided, however*, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided, further, however*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by such Person in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; *provided, further*, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock shall not be deemed to be Disqualified Stock.

“Domestic Subsidiary” means a Restricted Subsidiary that is not a Foreign Subsidiary.

“EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period *plus*, without duplication, to the extent the same was deducted in calculating Consolidated Net Income:

- (1) Consolidated Taxes; *plus*
- (2) Fixed Charges and costs of surety bonds in connection with financing activities; *plus*
- (3) Consolidated Depreciation and Amortization Expense; *plus*
- (4) Consolidated Non-Cash Charges; *plus*
- (5) any expenses or charges (other than Consolidated Depreciation and Amortization Expense) related to any issuance of Equity Interests, Investment, acquisition, New

Project, disposition, loan origination, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the Transactions, the Notes or any Bank Indebtedness, (ii) any amendment or other modification of the Notes or other Indebtedness and (iii) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Permitted Securitization Financing; *plus*

(6) business optimization expenses and other restructuring charges, reserves or expenses (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, facility closures, facility consolidations, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges) and Pre-Opening Expenses; *plus*

(7) the amount of loss or discount on sale of assets to a Special Purpose Securitization Subsidiary in connection with a Permitted Securitization Financing, including amortization of loan origination costs and amortization of portfolio discounts; *plus*

(8) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of an Issuer or a Subsidiary Guarantor or net cash proceeds of an issuance of Equity Interests of the Company (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation of the Cumulative Credit; *plus*

(9) the amount of any loss attributable to a New Project, until the date that is 12 months after the date of completing the construction, acquisition, assembling or creation of such New Project, as the case may be; provided that (a) such losses are reasonably identifiable and factually supportable and certified by a responsible financial or accounting officer of the Company and (b) losses attributable to such New Project after 12 months from the date of completing such construction, acquisition, assembling or creation, as the case may be, shall not be included in this clause (9); *plus*

(10) the amount of any management, monitoring, consulting, transaction, advisory and similar fees and related expenses paid to the Investors or any Investor Affiliate (or any accruals relating to such fees and related expenses) during such period to the extent otherwise permitted by Section 4.07; *plus*

(11) with respect to any joint venture that is not a Subsidiary and solely to the extent relating to any net income referred to in clause (7) of the definition of "Consolidated Net Income," an amount equal to the proportion of those items described in clauses (1) and (2) above relating to such joint venture corresponding to the Company's and the Restricted Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Subsidiary); *plus*

(12) [reserved]; *plus*

(13) all adjustments of the nature used in connection with the calculation of “Further Adjusted EBITDA” as set forth in “Summary Historical Consolidated Financial and Other Information” under “Summary” in the Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such period; and

less, without duplication, to the extent the same increased Consolidated Net Income,

(14) non-cash items increasing Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced EBITDA in any prior period and any items for which cash was received in a prior period).

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Equity Offering” means any public or private sale after the Issue Date of common Capital Stock or Preferred Stock of the Company or any direct or indirect parent of the Company, as applicable (other than Disqualified Stock), other than:

- (1) public offerings with respect to the Company’s or such direct or indirect parent’s common stock registered on Form S-4 or Form S-8;
- (2) issuances to any Subsidiary of the Company; and
- (3) any such public or private sale that constitutes an Excluded Contribution.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Excluded Contributions” means the Cash Equivalents or other assets (valued at their Fair Market Value as determined in good faith by senior management or the Board of Directors of the Company) received by the Company after the Issue Date from:

- (1) contributions to its common equity capital, and
- (2) the sale (other than to a Subsidiary of the Company or to any Subsidiary management equity plan or stock option plan or any other management or employee benefit plan or agreement) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Company, in each case designated as Excluded Contributions pursuant to an Officer’s Certificate.

“Excluded Property” means the property and other assets of the Issuers and the Subsidiary Guarantors that are excluded from the grant of security interests in favor of the First-Priority Collateral Agent, on behalf of the First-Priority Secured Parties, pursuant to the terms of this Indenture and the Security Documents.

“Excluded Subsidiary” means (a) each Unrestricted Subsidiary, (b) each Domestic Subsidiary that is not a Wholly Owned Subsidiary (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary), (c) each Domestic Subsidiary that is prohibited from guaranteeing the Notes by any requirement of law or that would require consent, approval, license or authorization of a governmental (including regulatory) authority to guarantee the Notes (unless such consent, approval, license or authorization has been received); provided that, for the avoidance of doubt, such Domestic Subsidiary shall have no obligation to seek such consent, approval, license or authorization, (d) each Domestic Subsidiary that is prohibited by any applicable contractual requirement from guaranteeing the Notes on the Issue Date or at the time such Subsidiary becomes a Subsidiary (in each case for so long as such restriction or any replacement or renewal thereof is in effect), (e) any Foreign Subsidiary that is a CFC or FSHCO, (f) any Domestic Subsidiary that (i) is a FSHCO or (ii) is a direct or indirect subsidiary of a CFC, (g) any Special Purpose Securitization Subsidiary, (h) any Subsidiary (other than a Significant Subsidiary) that (i) did not, as of the last day of the fiscal quarter of the Company most recently ended, have assets with a value in excess of 5.0% of the Total Assets or revenues representing in excess of 5.0% of total revenues of the Company and the Restricted Subsidiaries on a consolidated basis as of such date and (ii) taken together with all other such Subsidiaries being excluded pursuant to this clause (h), as of the last day of the fiscal quarter of the Company most recently ended, did not have assets with a value in excess of 10.0% of the Total Assets or revenues representing in excess of 10.0% of total revenues of the Company and the Restricted Subsidiaries on a consolidated basis as of such date, and (i) any Subsidiary for which providing a Subsidiary Guarantee or granting Liens required by the Security Documents to secure Indebtedness could reasonably be expected to result in material tax consequences as determined in good faith by the Company in consultation with the administrative agent under the Credit Agreement.

“Fair Market Value” means, with respect to any asset or property, the price which could be negotiated in an arm’s-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

“FSHCO” means any Subsidiary that owns no material assets other than the Equity Interests of one or more Foreign Subsidiaries that are CFCs and/or of one or more FSHCOs.

“First Lien Intercreditor Agreement” means (i) the Pari First Lien Intercreditor Agreement among Wilmington Savings Fund Society, FSB as First-Priority Collateral Agent, Wilmington Savings Fund Society, FSB as an Authorized Representative, the trustee for the Old Notes as an Authorized Representative, and the other parties from time to time party thereto, dated as of July 12, 2017, as supplemented by the Joinder Agreement, dated as of the date hereof, by and among the Trustee and the First-Priority Collateral Agent and as it may be further amended, restated, supplemented or otherwise modified from time to time in accordance with this Indenture or (ii) any replacement or other intercreditor agreement that contains terms not materially less favorable to holders of the Notes than the intercreditor agreement referred to in clause (i).

“First-Priority Collateral Agent” means Wilmington Savings Fund Society, FSB, in its capacity as collateral agent for the First-Priority Secured Parties, together with its successors and permitted assigns (or if such Person is no longer the First-Priority Collateral Agent, such agent or trustee as is designated as “First-Priority Collateral Agent” under the First-Priority Obligations Documents).

“First-Priority Obligations” means (i) all Secured Bank Indebtedness, (ii) all Notes Obligations, (iii) Other First-Priority Obligations and (iv) if Hedging Obligations or obligations in respect of cash management services have been secured by the collateral that secures the First-Priority Obligations, all other obligations of the Company or any of its Restricted Subsidiaries in respect of such Hedging Obligations or obligations in respect of cash management services, in each case, owing to a Person that is a holder of Secured Bank Indebtedness or an Affiliate of such holder on the Issue Date or at the time of entry into such Hedging Obligations or obligations in respect of cash management services.

“First-Priority Obligations Documents” means the Credit Agreement Documents, the Notes Documents and any other documents or instrument evidencing or governing any other First-Priority Obligations.

“First-Priority Secured Parties” means the Persons holding any First-Priority Obligations, including the First-Priority Collateral Agent.

“Fixed Charge Calculation Date” has the meaning assigned in the “Fixed Charge Coverage Ratio” definition.

“Fixed Charge Coverage Ratio” means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Company or any of its Restricted Subsidiaries Incurs, repays, repurchases or redeems any Indebtedness or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “Fixed Charge Calculation Date”), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations that the Company or any Restricted Subsidiary has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Calculation Date (each, for purposes of this definition, a “pro forma event”) shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations and other operational changes, business realignment



projects or initiatives, New Projects, restructurings or reorganizations (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation, operational change, business realignment project or initiative, New Project, restructuring or reorganization, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger, amalgamation, consolidation, operational change, business realignment project or initiative, New Project, restructuring or reorganization had occurred at the beginning of the applicable four-quarter period. If since the beginning of such period any Restricted Subsidiary is designated an Unrestricted Subsidiary or any Unrestricted Subsidiary is designated a Restricted Subsidiary, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such designation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to any *pro forma* event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable good faith determination of the Company as set forth in an Officer's Certificate, to reflect (1) operating expense reductions and other operating improvements, synergies or cost savings reasonably expected to result from any relevant *pro forma* event (including, to the extent applicable, the Transactions) and (2) all adjustments of the type used in connection with the calculation of "Further Adjusted EBITDA" as set forth in the "Summary Historical Consolidated Financial and Other Information" portion of the "Summary" section of the Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period; provided that for all purposes of determining EBITDA hereunder (i) adjustments for operating expense reductions and other operating improvements, synergies or cost savings shall not be more than 20% of EBITDA for the most recently ended four fiscal quarter period (calculated prior to giving effect to such capped adjustments (but, for the avoidance of doubt, after giving effect to other uncapped *pro forma* adjustments)) and (ii) actions resulting in operating expense reductions and other operating improvements, synergies or cost savings are, in each case, required to be taken or commenced or expected to be taken or commenced (in the good faith determination of the Company) within 24 months after the date any such transaction is consummated; provided that the limitations set forth in clauses (i) and (ii) shall not apply to any operating expense reductions, other operating improvements or synergies and adjustments resulting from the Transactions or otherwise pursuant to clause (2) above, and information and calculations supporting them in reasonable detail.

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be

deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a Eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

For purposes of making the computation referred to above, in giving effect to each New Project which commences operations and records not less than one full fiscal quarter's operations during such period, the operating results of such New Project shall be annualized on a straight line basis during such period, taking into account any seasonality adjustments determined by the Company in good faith.

For purposes of this definition, any amount in a currency other than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

"Fixed Charges" means, with respect to any Person for any period, the sum, without duplication, of: (1) Consolidated Interest Expense (excluding amortization or write-off of deferred financing costs) of such Person for such period, and (2) all cash dividend payments (excluding items eliminated in consolidation) on any series of Preferred Stock or Disqualified Stock of such Person and its Restricted Subsidiaries.

"Foreign Subsidiary" means a Subsidiary not organized or existing under the laws of the United States of America or any state thereof or the District of Columbia.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Issue Date. For the purposes of this Indenture, the term "consolidated" with respect to any Person shall mean such Person consolidated with its Restricted Subsidiaries, and shall not include any Unrestricted Subsidiary, but the interest of such Person in an Unrestricted Subsidiary will be accounted for as an Investment.

"guarantee" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations payable by another Person. The amount of any guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness 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 such Person in good faith.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under:

(1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and

(2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

“holder” or “noteholder” means the Person in whose name a Note is registered on the Registrar’s books.

“Holdings” means Exela Intermediate Holdings LLC, a Delaware limited liability company.

“Impairment” means, with respect to any Series of First-Priority Obligations, (i) any determination by a court of competent jurisdiction that (x) any of the First-Priority Obligations of such Series are unenforceable under applicable law or are subordinated to any other obligations (other than another Series of First-Priority Obligations), (y) any of the First-Priority Obligations of such Series do not have an enforceable security interest in any of the Collateral securing any other Series of First-Priority Obligations and/or (z) any intervening security interest exists securing any other obligations (other than another Series of First-Priority Obligations) on a basis ranking prior to the security interest of such Series of First-Priority Obligations but junior to the security interest of any other Series of First-Priority Obligations or (ii) the existence of any Collateral for any other Series of First-Priority Obligations that is not Common Collateral.

“Incur” means issue, assume, guarantee, incur or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. “Incurred” and “Incurrence” shall have correlative meanings.

“Indebtedness” means, with respect to any Person:

(1) the principal of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except any such balance that constitutes (i) a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) liabilities accrued in the ordinary course of business), which purchase price is due more than twelve months after the date of placing the property in service or

taking delivery and title thereto, (d) in respect of Capitalized Lease Obligations, or (e) representing any Hedging Obligations, if and to the extent that any of the foregoing indebtedness would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (1) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); *provided, however*, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as determined in good faith by the Company) of such asset at such date of determination, and (b) the principal amount of such Indebtedness of such other Person;

*provided, however*, that, notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) Obligations under or in respect of Permitted Securitization Financings; (5) trade and other ordinary course payables, accrued expenses and intercompany liabilities arising in the ordinary course of business; (6) [reserved]; (7) obligations in respect of Third Party Funds; (8) in the case of the Company and the Restricted Subsidiaries (x) all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business and (y) intercompany liabilities in connection with cash management, tax and accounting operations of the Company and the Restricted Subsidiaries; (9) [reserved]; (10) any obligations under Hedging Obligations; and (11) any Claims Administration Indebtedness of such person (except to the extent that any such Claims Administration Indebtedness exceeds the Claims Administration Investments of such Person); provided that such agreements are entered into for bona fide hedging purposes of the Company or its Restricted Subsidiaries (as determined in good faith by the Board of Directors or senior management of the Company, whether or not accounted for as a hedge in accordance with GAAP) and, in the case of any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement, such agreements are related to business transactions of the Company or its Restricted Subsidiaries entered into in the ordinary course of business and, in the case of any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement, such agreements substantially correspond in terms of notional amount, duration and interest rates, as applicable, to Indebtedness of the Company or its Restricted Subsidiaries Incurred without violation of this Indenture.

Notwithstanding anything in this Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would

otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Indenture but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Indenture.

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

“Independent Financial Advisor” means an accounting, appraisal or investment banking firm or consultant, in each case of nationally recognized standing, that is, in the good faith determination of the Company, qualified to perform the task for which it has been engaged.

“Interest Payment Date” has the meaning set forth in Paragraph 1 of the Note.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

“Investment Grade Securities” means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents),

(2) securities that have a rating equal to or higher than Baa3 (or equivalent) by Moody’s and BBB- (or equivalent) by S&P, but excluding any debt securities or loans or advances between and among the Company and its Subsidiaries,

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment and/or distribution, and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees of loans), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as the other investments included in this definition to the extent such transactions involve the

transfer of cash or other property. For purposes of the definition of “Unrestricted Subsidiary” and Section 4.04:

(1) “Investments” shall include the portion (proportionate to the Company’s equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Company) of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary equal to an amount (if positive) equal to:

(a) the Company’s “Investment” in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Company’s equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Company) of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value (as determined in good faith by the Company) at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company.

“Investor” means, collectively, investment funds managed by Affiliates of HandsOn Global Management, LLC and other co-investors in the Equity Interests of Parent as of the Issue Date.

“Investor Affiliates” mean each Affiliate of the Investors that is neither a “portfolio company” (which means a company actively engaged in providing goods or services to unaffiliated customers), whether or not controlled, nor a company controlled by a “portfolio company”.

“Issue Date” means the date on which the Initial Notes are originally issued.

“Junior Lien Obligations” means the Obligations with respect to other Indebtedness permitted to be incurred under this Indenture, which is by its terms intended to be secured by the Collateral on a basis junior to the Notes; *provided* such Lien is permitted to be incurred under this Indenture.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement or any lease in the nature thereof); provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of the Company or any direct or indirect parent of the Company, as the case may be, on the Issue Date together with (1) any new directors whose election by such boards of directors or whose nomination for election by the equityholders of the Company or any direct or indirect parent of the Company, as applicable, was approved by a vote

of a majority of the directors of the Company or any direct or indirect parent of the Company, as applicable, then still in office who were either directors on the Issue Date or whose election or nomination was previously so approved and (2) executive officers and other management personnel of the Company or any direct or indirect parent of the Company, as applicable, hired at a time when the directors on the Issue Date together with the directors so approved constituted a majority of the directors of the Company or any direct or indirect parent of the Company, as applicable.

“Moody’s” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“Net Income” means, with respect to any Person, the net income (loss) of such Person and its Restricted Subsidiaries, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“Net Proceeds” means the aggregate cash proceeds received by the Company or any Restricted Subsidiary in respect of any Asset Sale (including, without limitation, any cash received in respect of or upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration (including, without limitation, legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses Incurred as a result thereof, taxes paid or payable as a result thereof (including, without duplication, Tax Distributions and after taking into account any available tax credits or deductions and any tax sharing arrangements related solely to such disposition), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required (other than pursuant to Section 4.06(b)) to be paid as a result of such transaction, and any deduction of appropriate amounts to be provided by the Company as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, and payments made to holders of minority interests in Restricted Subsidiaries that are joint ventures as a result of such Asset Sale.

“New Project” means (x) each contract or project with respect to new customers and any expansions of contracts or projects with respect to existing customers and (y) each creation (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

“Notes Documents” means this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and the First Lien Intercreditor Agreement.

“Notes Obligations” means Obligations in respect of the Notes, this Indenture, the Subsidiary Guarantees and the Security Documents.

“Obligations” means any principal, interest, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness (including interest, fees, expenses, indemnity claims and other monetary obligations accrued during the pendency of an insolvency proceeding, whether or not constituting an allowed claim in such proceeding); *provided* that Obligations with respect to the Notes shall not include fees or indemnifications in favor of third parties other than the Trustee.

“Offering Memorandum” means the confidential offering memorandum and consent solicitation statement, dated October 27, 2021, relating to the exchange offer for the Old Notes and the issuance of the Initial Notes.

“Officer” means the Chairman of the Board of Directors, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of each Issuer.

“Officer’s Certificate” means a certificate signed on behalf of an Issuer by an Officer of such Issuer who is the Chief Executive Officer, the Chief Financial Officer, the President, the Treasurer, or the Chief Accounting Officer of such Issuer, which meets the requirements set forth in this Indenture.

“Old Notes” means the Issuers’ 10.000% First-Priority Senior Secured Notes due 2023 issued on July 12, 2017 pursuant to the Indenture, dated as of July 12, 2017 (the “Old Notes Indenture”), by and among the Issuers, the Subsidiary Guarantors party thereto, Wilmington Trust, National Association, as trustee, as it may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Old Notes Documents” means the collective references to the Old Notes Indenture, the Old Notes issued pursuant thereto, the guarantees thereof and the collateral documents relating thereto, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified, in whole or in part, from time to time.

“Old Term Loans” means the Company’s term loans maturing on July 12, 2023 incurred under the Credit Agreement as in effect on the Issue Date.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company.

“Other First-Priority Obligations” means other Indebtedness or Obligations of the Company and its Restricted Subsidiaries that are (and permitted hereunder to be) equally and ratably secured with the Obligations under the Credit Agreement and the Notes by Liens on the Common Collateral and is designated by the Company as an Other First-Priority Obligation pursuant to the First Lien Intercreditor Agreement and added to the Security Documents in accordance with the terms thereof.



“Parent” means Exela Technologies, Inc., a Delaware corporation.

“Pari Passu Indebtedness” means (a) with respect to an Issuer, the Notes and any Indebtedness which ranks pari passu in right of payment to the Notes and (b) with respect to any Subsidiary Guarantor, its Subsidiary Guarantee and any Indebtedness which ranks pari passu in right of payment to such Subsidiary Guarantor’s Subsidiary Guarantee.

“Permitted Holder Group” has the meaning assigned in the “Permitted Holders” definition.

“Permitted Holders” means, at any time, each of (i) the Investors and the Investor Affiliates (excluding any of their portfolio companies), (ii) the Management Group, (iii) any Person that has no material assets other than the Equity Interests of the Company or any direct or indirect parent of the Company and that, directly or indirectly, holds or acquires beneficial ownership of 100% on a fully diluted basis of the total voting power of the Voting Stock of the Company, and of which no other Person or “group” (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Issue Date), other than any of the other Permitted Holders specified in clauses (i), (ii) and (iii), beneficially owns more than 50% on a fully diluted basis of the total voting power of the Voting Stock thereof and (iv) any “group” (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Issue Date) the members of which include any of the other Permitted Holders specified in clauses (i), (ii) and (iii) above and that, directly or indirectly, hold or acquire beneficial ownership of the Voting Stock of the Company (a “Permitted Holder Group”), so long as (1) each member of the Permitted Holder Group has voting rights proportional to the percentage of ownership interests held or acquired by such member and (2) no Person or other “group” (other than the other Permitted Holders specified in clauses (i), (ii) and (iii) above) beneficially owns more than 50% on a fully diluted basis of the Voting Stock held by the Permitted Holder Group. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

“Permitted Investments” means:

- (1) any Investment in the Company or any Restricted Subsidiary;
- (2) any Investment in Cash Equivalents or Investment Grade Securities;
- (3) any Investment by the Company or any Restricted Subsidiary in a Person if as a result of such Investment (a) such Person becomes a Restricted Subsidiary, or (b) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary;
- (4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with an Asset Sale made pursuant to Section 4.06 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on, or made pursuant to binding commitments existing on, the Issue Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided* that the amount of any such Investment may be increased (x) as required by the terms of such Investment as in existence on the Issue Date or (y) as otherwise permitted under this Indenture;

(6) (i) loans and advances to officers, directors, employees or consultants of the Company or any Restricted Subsidiary in the ordinary course of business not to exceed \$20 in the aggregate at any time outstanding (valued in good faith by the Company at the time of the making thereof, and without giving effect to any subsequent change in value), (ii) advances of payroll payments, business related travel expenses, moving expenses and other similar expenses and expenses to employees in the ordinary course of business and (iii) in connection with such Person's purchase of Equity Interests of the Company or any direct or indirect parent of the Company solely to the extent that the amount of such loans and advances shall be contributed to the Company in cash as common equity;

(7) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business or Investments acquired by the Company or a Restricted Subsidiary as a result of a foreclosure by the Company or any of the Restricted Subsidiaries with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(8) Hedging Obligations permitted under Section 4.03(b)(x);

(9) any Investment by the Company or any Restricted Subsidiary in a Similar Business having an aggregate Fair Market Value (as determined in good faith by the Company at the time of the making thereof, and without giving effect to any subsequent changes in value), taken together with all other Investments made pursuant to this clause

(9) that are at that time outstanding, not to exceed the sum of (x) the greater of (i) \$65 million and (ii) 0.19 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such event and giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters plus (y) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in respect of any such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided, however*, that if any Investment pursuant to this clause (9) is made in any Person that is not the Company or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Company or a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (9) for so long as such Person continues to be the Company or a Restricted Subsidiary;

(10) additional Investments by the Company or any Restricted Subsidiary having an aggregate Fair Market Value (as determined in good faith by the Company at the time

of the making thereof, and without giving effect to any subsequent changes in value), taken together with all other Investments made pursuant to this clause (10) that are at that time outstanding, not to exceed the sum of (x) the greater of (i) \$100 million and (ii) 0.29 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such event and giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters plus (y) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in respect of any such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided, however*, that if any Investment pursuant to this clause (10) is made in any Person that is not the Company or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Company or a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (10) for so long as such Person continues to be the Company or a Restricted Subsidiary;

(11) Investments the payment for which consists of Equity Interests of the Company (other than Disqualified Stock) or any direct or indirect parent of the Company, as applicable; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of the definition of "Cumulative Credit";

(12) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 4.07(b) (except transactions described in clauses (ii), (iv), (vi), (ix)(B) and (xvi) of Section 4.07(b));

(13) guarantees issued in accordance with Section 4.03 and Section 4.11 including, without limitation, any guarantee or other obligation issued or incurred under any Credit Agreement in connection with any letter of credit issued for the account of the Company or any of its Restricted Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit);

(14) (i) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons; (ii) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of intellectual property in each case in the ordinary course of business;

(15) Investments consisting of Securitization Assets or arising as a result of Permitted Securitization Financings;

(16) additional Investments in joint ventures (as determined in good faith by the Company at the time of the making thereof, and without giving effect to any subsequent changes in value) not to exceed, at any one time in the aggregate outstanding under this clause (16), the sum of (x) the greater of (i) \$40 million and (ii) 0.12 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such event and giving *pro*

*forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters plus (y) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in respect of any such Investment (with the Fair Market Value of each Investment being measured at the time such Investment is made and without giving effect to subsequent changes in value); *provided, however*, that the Company or any Restricted Subsidiary may make additional Investments in joint ventures if the Total Indebtedness Leverage Ratio for the most recently ended four fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such Investment is not greater than 2.72 to 1.00 on a pro forma basis after giving effect to such Investment as if it had occurred at the beginning of such four fiscal quarters; *provided, further, however*, that if any Investment pursuant to this clause (16) is made in any Person that is not the Company or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Company or a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (16) for so long as such Person continues to be the Company or a Restricted Subsidiary;

(17) Investments of a Restricted Subsidiary acquired after the Issue Date or of an entity merged into, amalgamated with, or consolidated with the Company or a Restricted Subsidiary in a transaction that is not prohibited by Section 5.01 after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(18) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(19) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Company or its Restricted Subsidiaries;

(20) any Investment consisting of intercompany current liabilities in connection with the cash management, tax and accounting operations of the Company and Restricted Subsidiaries;

(21) [reserved];

(22) other Investments so long as, immediately after giving effect to such Investment, the Total Indebtedness Leverage Ratio for the most recently ended four fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such Investment is not greater than 2.72 to 1.00 on a *pro forma* basis after giving effect to such Investment as if it had occurred at the beginning of such four fiscal quarters;

(23) Investments resulting from pledges and deposits referred to in clauses (1), (4), (21), (34) and (35) of the definition of "Permitted Liens";

(24) (i) accounts receivable, security deposits and prepayments arising, and trade credit granted, in the ordinary course of business and (ii) any securities received in satisfaction or partial satisfaction of defaulted accounts receivable from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss; and

(25) Guarantees by the Company or any Restricted Subsidiary of operating leases (other than Capitalized Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Company or any Restricted Subsidiary in the ordinary course of business.

“Permitted Liens” means, with respect to any Person:

(1) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other social security laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (ii) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Company or any Restricted Subsidiary;

(2) Liens imposed by law, such as landlord’s, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, supplier’s, construction or other like Liens securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Company or any Restricted Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(3) Liens for taxes, assessments or other governmental charges or levies not yet overdue by more than 30 days or that are being contested in good faith by appropriate proceedings;

(4) deposits and other Liens to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capitalized Lease Obligations), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with public utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Company or any Restricted Subsidiary in the ordinary course of business, including those incurred to secure health, safety, insurance and environmental obligations in the ordinary course of business;

(5) zoning restrictions, building codes and laws, survey exceptions, easements, trackage rights, leases (other than Capitalized Lease Obligations), licenses, special assessments, rights-of-way, covenants, conditions, restrictions and declarations on or with respect to the use of real property, servicing agreements, development agreements, site plan agreements and other similar encumbrances, in each case, incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do

not interfere in any material respect with the ordinary conduct of the business of the Company or any Restricted Subsidiary;

(6) (A) Liens on assets of a Subsidiary that is not an Issuer or a Subsidiary Guarantor securing Indebtedness of a Subsidiary that is not an Issuer or a Subsidiary Guarantor not prohibited by Section 4.03;

(B) Liens securing Obligations in respect of (x) Indebtedness Incurred pursuant to Section 4.03(b)(i) and (y) any other Indebtedness permitted to be Incurred under this Indenture if, as of the date such Indebtedness was Incurred, and after giving pro forma effect thereto and the application of the net proceeds therefrom, the Senior Secured Leverage Ratio of the Company does not exceed 3.75 to 1.00; and

(C) Liens securing Obligations in respect of Indebtedness permitted to be Incurred pursuant to clause (iv), (xii) (or (xiv) to the extent it guarantees any such Indebtedness), (xvi), (xx) or (xxiii) of Section 4.03(b) (*provided* that (i) in the case of clause (xx), such Lien does not extend to the property or assets of the Company or any Subsidiary of the Company other than a Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor, (ii) in the case of clause (iv), such Liens do not extend to any property or assets that are not being acquired, leased, constructed, repaired, replaced or improved with the proceeds of such Indebtedness being incurred pursuant to clause (iv) (or the indebtedness refinanced thereby) or sold in the applicable sale and lease back transaction and accessions and additions thereto, proceeds and products thereof, customary security deposits and related property; *provided*, that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender (and its Affiliates) (it being understood that with respect to any Liens on the Collateral being incurred under this clause (C)(ii) to secure Refinancing Indebtedness, if Liens on the Collateral securing the Indebtedness being refinanced (if any) constituted Junior Lien Obligations, then any Liens on such Collateral being incurred under this clause (C)(ii) to secure Refinancing Indebtedness shall also constitute Junior Lien Obligations), (iii) in the case of clause (xvi), such Liens securing Indebtedness Incurred pursuant to clause (xvi) shall only be permitted under this clause (C) if such Liens secure Indebtedness not created or Incurred in connection with, or in contemplation of, the acquisition and only extend to the property or assets acquired in such acquisition (and accessions and additions thereto and proceeds and products thereof), and (iv) in the case of clause (xxiii), it being understood that with respect to any Liens on the Collateral being incurred under this clause (C)(iv) to secure Refinancing Indebtedness, if Liens on the Collateral securing the Indebtedness being refinanced (if any) constituted Junior Lien Obligations, then any Liens on such Collateral being incurred under this clause (C)(iv) to secure Refinancing Indebtedness shall also constitute Junior Lien Obligations;

(7) Liens existing on the Issue Date (other than Liens in favor of the lenders under the Credit Agreement and in favor of holders of the Notes and Subsidiary Guarantees);

(8) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided, however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary;

*provided, further, however*, that such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition);

(9) Liens on assets or property at the time the Company or a Restricted Subsidiary acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Company or any Restricted Subsidiary; *provided, however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; *provided, further, however*, that the Liens may not extend to any other property owned by the Company or any Restricted Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition);

(10) Liens securing Indebtedness or other obligations of the Company or a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be Incurred in accordance with Section 4.03;

(11) Liens (i) on not more than \$5,000,000 of deposits securing Hedging Obligations entered into for non-speculative purposes and (ii) on cash or cash equivalents securing Hedging Obligations in the ordinary course of business submitted for clearing in accordance with applicable requirements of law);

(12) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit, bank guarantee or bankers' acceptance issued or created for the account of the Company or any Restricted Subsidiary in the ordinary course of business; provided that such Lien secures only the obligations of the Company or such Restricted Subsidiaries in respect of such letter of credit, bank guarantee or banker's acceptance to the extent permitted under this Indenture;

(13) leases and subleases not constituting Capitalized Lease Obligations of real property not material to the conduct of any business line of the Company and its Restricted Subsidiaries granted to others in the ordinary course of business that do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(14) Liens arising from precautionary Uniform Commercial Code financing statements or consignments entered into in connection with any transaction otherwise permitted under this Indenture;

(15) Liens in favor of an Issuer or any Subsidiary Guarantor;

(16) Liens in respect of Permitted Securitization Financings that extend only to the assets subject thereto and Equity Interests of Special Purpose Securitization Subsidiaries;

(17) Liens (i) on Equity Interests in joint ventures (A) securing obligations of such joint venture or (B) pursuant to the relevant joint venture agreement or arrangement and (ii) on Equity Interests in Unrestricted Subsidiaries;

(18) licenses of intellectual property and software that are not material to the conduct of any of the business lines of the Company and its Restricted Subsidiaries and the value of which does not constitute a material portion of the assets of the Company and its Restricted Subsidiaries, taken as a whole, and such license does not materially interfere with the ordinary course of conduct of the business of the Company or any of its Restricted Subsidiaries;

(19) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (6), (7), (8), (9), (10), (11), (15), (24) and (32) of this definition; *provided, however*, that (x) such new Lien shall be limited to all or part of the same property (including any after acquired property to the extent it would have been subject to the original Lien) that secured the original Lien (plus improvements on and accessions to such property, proceeds and products thereof, customary security deposits and any other assets pursuant to the after-acquired property clauses to the extent such assets secured (or would have secured) the Indebtedness being refinanced, refunded, extended, renewed or replaced), and (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount (or accreted value, if applicable) or, if greater, committed amount of the applicable Indebtedness described under clauses (6), (7), (8), (9), (10), (11), (15), (24) and (32) at the time the original Lien became a Permitted Lien under this Indenture, (B) unpaid accrued interest and premiums (including tender premiums), and (C) an amount necessary to pay any underwriting discounts, defeasance costs, commissions, fees and expenses related to such refinancing, refunding, extension, renewal or replacement; *provided further*, however, that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clause (6)(B) or (6)(C), the principal amount of any Indebtedness Incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clause (6)(B) or (6)(C) and not this clause (19) for purposes of determining the principal amount of Indebtedness outstanding under clause (6)(B) or (6)(C); *provided, further, however*, that any Lien securing any refinancing of any Indebtedness secured by a Lien referred to in clause (32) shall be a junior Lien subject to a customary intercreditor agreement;

(20) non-consensual Liens (not incurred in connection with borrowed money) on equipment of the Company or any of its Restricted Subsidiaries granted in the ordinary course of business to the Company's or such Restricted Subsidiary's client at which such equipment is located;

(21) judgment and attachment Liens not giving rise to an Event of Default;

(22) Liens arising out of consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(23) Liens that (i) are contractual rights of set-off (and related pledges) (a) relating to the establishment of depository relations with banks and other financial institutions not given in connection with the issuance of Indebtedness or (b) relating to pooled deposits, sweep accounts, reserve accounts or similar accounts of the Company or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company or any Subsidiary, including with respect to credit card charge-backs and similar



obligations, or (ii) relate to purchase orders and other agreements entered into with customers, suppliers or service providers of the Company or any Subsidiary (a) in the ordinary course of business or (b) in connection with implementation of business optimization programs;

(24) other Liens securing obligations the outstanding principal amount of which does not, taken together with the principal amount of all other obligations secured by Liens incurred under this clause (24) (together with the principal amount of any other obligations secured by Liens refinanced pursuant to clause (19) above) that are at that time outstanding, exceed the greater of \$100 million and 0.29 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such event and giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters;

(25) Liens on any amounts held by a trustee or agent under any indenture or other debt agreement issued in escrow pursuant to customary escrow arrangements pending the release thereof, or under any indenture or other debt agreement pursuant to customary discharge, redemption or defeasance provisions;

(26) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code in effect in the State of New York or similar provisions in similar codes, statutes or laws in other jurisdictions on items in the course of collection, (ii) attaching to commodity trading accounts, other commodity brokerage accounts or securities incurred in the ordinary course of business, (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry, (iv) encumbering customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes, (v) in respect of Third Party Funds or (vi) in favor of credit card companies pursuant to agreements therewith;

(27) Liens disclosed by the title insurance policies delivered on (with respect to all mortgages delivered on the Issue Date) or subsequent to the Issue Date and pursuant to the Credit Agreement and any replacement, extension or renewal of any such Lien; *provided* that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; *provided, further*, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted under this Indenture;

(28) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(29) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(30) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition of "Cash Equivalents";

(31) Liens securing insurance premium financing arrangements; *provided* that such Liens are limited to the applicable unearned insurance premiums;

(32) Liens on the Collateral securing Junior Lien Obligations (subject to a customary intercreditor agreement) if, as of the date such Junior Lien Obligations were Incurred, and after giving pro forma effect thereto and the application of the net proceeds therefrom, the Secured Leverage Ratio of the Company does not exceed 4.00 to 1.00; *provided* that the Notes are secured on a senior priority basis to the obligations so secured until such time as such obligations are no longer secured by a Lien;

(33) Liens on non-Collateral assets, so long as such Liens secure obligations permitted to be Incurred pursuant to Section 4.03(b);

(34) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(35) Liens solely on any cash earnest money deposits made by the Company or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted under this Indenture;

(36) Liens to secure cash management services in the ordinary course of business; provided that such Liens are not incurred in connection with, and do not secure, any borrowings or Indebtedness;

(37) [Reserved];

(38) Claims Administration Liens;

(39) Liens on cash and Cash Equivalents on deposit with lenders and affiliates of lenders securing obligations owing to such Persons under any treasury, depository, overdraft or other cash management services agreements or arrangements with the Company or any of its Restricted Subsidiaries; and

(40) in the case of real property that constitutes a leasehold interest, any Lien to which the fee simple interest (or any superior leasehold interest) is subject.

“Permitted Securitization Financing” shall mean one or more transactions pursuant to which (a) Securitization Assets or interests therein are sold or transferred to or financed by one or more Special Purpose Securitization Subsidiaries, and (b) such Special Purpose Securitization Subsidiaries finance (or refinance) their acquisition of such Securitization Assets or interests therein, or the financing thereof, by selling or borrowing against Securitization Assets, and any Hedging Obligations entered into in connection with such Securitization Assets; *provided*, that, recourse to the Company or any Restricted Subsidiary (other than the Special Purpose Securitization Subsidiaries) in connection with such transactions shall be limited to the extent customary (as determined by the Company in good faith) for similar transactions in the applicable jurisdictions (including, to the extent applicable, in a manner consistent with the delivery of a “true sale”/“absolute transfer” opinion with respect to any transfer by the Company or any Restricted Subsidiary (other than a Special Purpose Securitization Subsidiary)).

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Preferred Stock” means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

“Pre-Opening Expenses” means, with respect to any fiscal period, the amount of expenses (other than interest expense) incurred with respect to facilities which are classified as “pre-opening expenses” (or any similar or equivalent caption) on the applicable financial statements of the Company and its Subsidiaries for such period, prepared in accordance with GAAP.

“Pro Forma EBITDA” means, with respect to any Person, at any date, the EBITDA of such Person for the full four fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date, subject to the following adjustments. In the event that the Company or any Restricted Subsidiary Incurs, repays, repurchases or redeems any Indebtedness subsequent to the commencement of the period for which Pro Forma EBITDA is being calculated but prior to the event for which the calculation of Pro Forma EBITDA is made (the “Pro Forma EBITDA Calculation Date”), then Pro Forma EBITDA shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations that the Company or any Restricted Subsidiary has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Pro Forma EBITDA Calculation Date (each, for purposes of this definition, a “pro forma event”) shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations and other operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation, operational change, business realignment project or initiative, New Project, restructuring or reorganization, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then Pro Forma EBITDA shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger, amalgamation, consolidation, operational change, business realignment project or initiative, New Project, restructuring or reorganization had occurred at the beginning of the applicable four-quarter period. If since the beginning of such

period any Restricted Subsidiary is designated an Unrestricted Subsidiary or any Unrestricted Subsidiary is designated a Restricted Subsidiary, then Pro Forma EBITDA shall be calculated giving *pro forma* effect thereto for such period as if such designation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever pro forma effect is to be given to any pro forma event, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Company. Any such pro forma calculation may include adjustments appropriate, in the reasonable good faith determination of the Company as set forth in an Officer's Certificate, to reflect (1) operating expense reductions and other operating improvements, synergies or cost savings reasonably expected to result from any relevant pro forma event (including, to the extent applicable, the Transactions) and (2) all adjustments of the type used in connection with the calculation of "Further Adjusted EBITDA" as set forth in the "Summary Historical Consolidated Financial and Other Information" portion of the "Summary" section of the Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period; provided that for all purposes of determining EBITDA hereunder (i) adjustments for operating expense reductions and other operating improvements, synergies or cost savings shall not be more than 20% of EBITDA for the most recently ended four fiscal quarter period (calculated prior to giving effect to such capped adjustments (but, for the avoidance of doubt, after giving effect to other uncapped pro forma adjustments)) and (ii) actions resulting in operating expense reductions and other operating improvements, synergies or cost savings are, in each case, required to be taken or commenced or expected to be taken or commenced (in the good faith determination of the Company) within 24 months after the date any such transaction is consummated; provided that the limitations set forth in clauses (i) and (ii) shall not apply to any operating expense reductions, other operating improvements or synergies and adjustments resulting from the Transactions or otherwise pursuant to clause (2) above, and information and calculations supporting them in reasonable detail.

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Pro Forma EBITDA Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a Eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

For purposes of making the computation referred to above, in giving effect to each New Project which commences operations and records not less than one full fiscal quarter's operations during such period, the operating results of such New Project shall be annualized on a

straight line basis during such period, taking into account any seasonality adjustments determined by the Company in good faith.

“Pro Forma EBITDA Calculation Date” has the meaning assigned in the “Pro Forma EBITDA” definition.

“Rating Agency” means (1) each of Moody’s and S&P (and their respective successors and assigns) and (2) if Moody’s or S&P ceases to rate the Notes for reasons outside of the Company’s control, a “nationally recognized statistical rating organization” within the meaning of Rule 15cs-1(c)(2)(vi)(F) under the Exchange Act selected by the Company or any direct or indirect parent of the Company as a replacement agency for Moody’s or S&P, as the case may be.

“Receivables Assets” shall mean accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Company or any Subsidiary.

“Record Date” has the meaning set forth in Paragraph 2 of the Note.

“Restricted Cash” means (i) cash and Cash Equivalents held by Restricted Subsidiaries that would appear as “restricted” on a consolidated balance sheet of the Company or any of its Restricted Subsidiaries and (ii) cash and Cash Equivalents not available to be distributed to the Company or a Restricted Subsidiary (other than a Special Purpose Securitization Subsidiary) from issuers of Permitted Securitization Financings.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Subsidiary” means, with respect to any Person, any Subsidiary of such Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Indenture, all references to Restricted Subsidiaries shall mean Restricted Subsidiaries of the Company.

“S&P” means S& P Global Ratings or any successor to the rating agency business thereof.

“Sale/Leaseback Transaction” means an arrangement relating to property now owned or hereafter acquired by the Company or a Restricted Subsidiary whereby the Company or such Restricted Subsidiary transfers such property to a Person and the Company or such Restricted Subsidiary leases it from such Person, other than leases between the Company and a Restricted Subsidiary or between Restricted Subsidiaries.

“SEC” means the Securities and Exchange Commission.

“Secured Bank Indebtedness” means any Bank Indebtedness that is secured by a Permitted Lien incurred or deemed incurred pursuant to clause (6) of the definition of “Permitted Liens,” as designated by the Company to be included in this definition.

“Secured Indebtedness” means any Consolidated Total Indebtedness secured by a Lien.

“Secured Leverage Calculation Date” has the meaning assigned in the “Secured Leverage Ratio” definition.

“Secured Leverage Ratio” means, with respect to any Person, at any date, the ratio of (i) Secured Indebtedness of such Person and its Restricted Subsidiaries as of such date of calculation (determined on a consolidated basis in accordance with GAAP) less the amount of cash and Cash Equivalents in excess of any Restricted Cash that would be stated on the balance sheet of such Person and its Restricted Subsidiaries and held by such Person and its Restricted Subsidiaries as of such date of determination to (ii) EBITDA of such Person for the four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date on which such additional Indebtedness is Incurred. In the event that the Company or any Restricted Subsidiary Incurs, repays, repurchases or redeems any Indebtedness subsequent to the commencement of the period for which the Secured Leverage Ratio is being calculated but prior to the event for which the calculation of the Secured Leverage Ratio is made (the “Secured Leverage Calculation Date”), then the Secured Leverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations that the Company or any Restricted Subsidiary has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Secured Leverage Calculation Date (each, for purposes of this definition, a “pro forma event”) shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations and other operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation, operational change, business realignment project or initiative, New Project, restructuring or reorganization, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Secured Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger, amalgamation, consolidation, operational change, business realignment project or initiative, New Project, restructuring or reorganization had occurred at the beginning of the applicable four-quarter period. If since the beginning of such period any Restricted Subsidiary is designated an Unrestricted Subsidiary or any Unrestricted Subsidiary is designated a Restricted Subsidiary, then the Secured Leverage

Ratio shall be calculated giving *pro forma* effect thereto for such period as if such designation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to any *pro forma* event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable good faith determination of the Company as set forth in an Officer's Certificate, to reflect (1) operating expense reductions and other operating improvements, synergies or cost savings reasonably expected to result from any relevant *pro forma* event (including, to the extent applicable, the Transactions) and (2) all adjustments of the type used in connection with the calculation of "Further Adjusted EBITDA" as set forth in the "Summary Historical Consolidated Financial and Other Information" portion of the "Summary" section of the Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period; provided that for all purposes of determining EBITDA hereunder (i) adjustments for operating expense reductions and other operating improvements, synergies or cost savings shall not be more than 20% of EBITDA for the most recently ended four fiscal quarter period (calculated prior to giving effect to such capped adjustments (but, for the avoidance of doubt, after giving effect to other uncapped *pro forma* adjustments)) and (ii) actions resulting in operating expense reductions and other operating improvements, synergies or cost savings are, in each case, required to be taken or commenced or expected to be taken or commenced (in the good faith determination of the Company) within 24 months after the date any such transaction is consummated; provided that the limitations set forth in clauses (i) and (ii) shall not apply to any operating expense reductions, other operating improvements or synergies and adjustments resulting from the Transactions or otherwise pursuant to clause (2) above, and information and calculations supporting them in reasonable detail.

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Secured Leverage Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a Eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

For purposes of making the computation referred to above, in giving effect to each New Project which commences operations and records not less than one full fiscal quarter's operations during such period, the operating results of such New Project shall be annualized on a straight line basis during such period, taking into account any seasonality adjustments determined by the Company in good faith.

For purposes of this definition, any amount in a currency other than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Securitization Assets” means any of the following assets (or interests therein) from time to time originated, acquired or otherwise owned by the Company or any Subsidiary or in which the Company or any Subsidiary has any rights or interests, in each case, without regard to where such assets or interests are located: (1) Receivables Assets, (2) franchise fees, royalties and other similar payments made related to the use of trade names and other intellectual property, business support, training and other services, (3) revenues related to distribution and merchandising of the products of the Company and its Subsidiaries, (4) intellectual property rights relating to the generation of any of the types of assets listed in this definition, (5) parcels of or interests in real property, together with all easements, hereditaments and appurtenances thereto, all improvements and appurtenant fixtures and equipment, incidental to the ownership, lease or operation thereof, (6) any Equity Interests of any Special Purpose Securitization Subsidiary or any Subsidiary of a Special Purpose Securitization Subsidiary and any rights under any limited liability company agreement, trust agreement, shareholders agreement, organizational or formation documents or other agreement entered into in furtherance of the organization of such entity, and (7) any other assets and property to the extent customarily included in securitization transactions of the relevant type in the applicable jurisdictions (as determined by the Company in good faith).

“Security Agreement” means the First Lien Collateral Agency and Security Agreement, dated as of July 12, 2017 (as supplemented by the Other First Lien Secured Party Consent, dated as of the date hereof, by and among the Trustee, the First-Priority Collateral Agent and the Company, and as further amended, supplemented, modified, extended, renewed, restated, refunded or refinanced from time to time), among the Company, each Subsidiary of the Company from time to time identified therein as a party and the First-Priority Collateral Agent.

“Security Documents” means the Security Agreement and the security agreements, pledge agreements, collateral assignments and mortgages, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating the security interests in the Collateral in favor of the First-Priority Collateral Agent for the benefit of the Trustee and the holders of the Notes and other First-Priority Obligations as contemplated by this Indenture.

“Senior Secured Leverage Calculation Date” has the meaning assigned in the “Senior Secured Leverage Ratio” definition.

“Senior Secured Leverage Ratio” means, with respect to any Person, at any date, the ratio of (i) Secured Indebtedness of such Person and its Restricted Subsidiaries constituting First-Priority Obligations as of such date of calculation (determined on a consolidated basis in accordance with GAAP) less the amount of cash and Cash Equivalents in excess of any



Restricted Cash that would be stated on the balance sheet of such Person and its Restricted Subsidiaries and held by such Person and its Restricted Subsidiaries as of such date of determination to (ii) EBITDA of such Person for the four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date on which such additional Indebtedness is Incurred. In the event that the Company or any Restricted Subsidiary Incurs, repays, repurchases or redeems any Indebtedness subsequent to the commencement of the period for which the Senior Secured Leverage Ratio is being calculated but prior to the event for which the calculation of the Senior Secured Leverage Ratio is made (the “Senior Secured Leverage Calculation Date”), then the Senior Secured Leverage Ratio shall be calculated giving pro forma effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations that the Company or any Restricted Subsidiary has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Senior Secured Leverage Calculation Date (each, for purposes of this definition, a “*pro forma event*”) shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations and other operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation, operational change, business realignment project or initiative, New Project, restructuring or reorganization, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Senior Secured Leverage Ratio shall be calculated giving pro forma effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger, amalgamation, consolidation, operational change, business realignment project or initiative, New Project, restructuring or reorganization had occurred at the beginning of the applicable four-quarter period. If since the beginning of such period any Restricted Subsidiary is designated an Unrestricted Subsidiary or any Unrestricted Subsidiary is designated a Restricted Subsidiary, then the Senior Secured Leverage Ratio shall be calculated giving pro forma effect thereto for such period as if such designation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever pro forma effect is to be given to any pro forma event, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Company. Any such pro forma calculation may include adjustments appropriate, in the reasonable good faith determination of the Company as set forth in an Officer’s Certificate, to reflect (1) operating expense reductions and other operating improvements, synergies or cost savings reasonably expected to result from any relevant pro

forma event (including, to the extent applicable, the Transactions) and (2) all adjustments of the type used in connection with the calculation of “Further Adjusted EBITDA” as set forth in the “Summary Historical Consolidated Financial and Other Information” portion of the “Summary” section of the Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period; provided that for all purposes of determining EBITDA hereunder (i) adjustments for operating expense reductions and other operating improvements, synergies or cost savings shall not be more than 20% of EBITDA for the most recently ended four fiscal quarter period (calculated prior to giving effect to such capped adjustments (but, for the avoidance of doubt, after giving effect to other uncapped pro forma adjustments)) and (ii) actions resulting in operating expense reductions and other operating improvements, synergies or cost savings are, in each case, required to be taken or commenced or expected to be taken or commenced (in the good faith determination of the Company) within 24 months after the date any such transaction is consummated; provided that the limitations set forth in clauses (i) and (ii) shall not apply to any operating expense reductions, other operating improvements or synergies and adjustments resulting from the Transactions or otherwise pursuant to clause (2) above, and information and calculations supporting them in reasonable detail.

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Senior Secured Leverage Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a Eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

For purposes of making the computation referred to above, in giving effect to each New Project which commences operations and records not less than one full fiscal quarter’s operations during such period, the operating results of such New Project shall be annualized on a straight line basis during such period, taking into account any seasonality adjustments determined by the Company in good faith.

For purposes of this definition, any amount in a currency other than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

“Series” means (a) with respect to the First-Priority Secured Parties, each of (i) the “Secured Parties” as defined in the Credit Agreement (or an equivalent provision thereof), (ii) the holders of the Notes and the Trustee (each in their capacity as such) and (iii) the

Additional First-Priority Secured Parties that become subject to the First Lien Intercreditor Agreement after the Issue Date that are represented by a common Authorized Representative (in its capacity as such for such Additional First-Priority Secured Parties) and (b) with respect to any First-Priority Obligations, each of (i) the Obligations under the Credit Agreement, (ii) the Notes Obligations and (iii) the Other First-Priority Obligations incurred pursuant to any applicable agreement, which pursuant to any joinder agreement, are to be represented under the First Lien Intercreditor Agreement by a common Authorized Representative (in its capacity as such for such Other First-Priority Obligations).

“Significant Subsidiary” means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC (or any successor provision).

“Similar Business” means any business, the majority of whose revenues are derived from (i) the business or activities of the Company and its Subsidiaries as of the Issue Date, (ii) any business that is a natural outgrowth or a reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (iii) any business that in the Company’s good faith business judgment constitutes a reasonable diversification of business conducted by the Company and its Subsidiaries.

“Special Purpose Securitization Subsidiary” shall mean (i) a direct or indirect Restricted Subsidiary of the Company established in connection with a Permitted Securitization Financing for the acquisition of Securitization Assets or interests therein, and which is organized in a manner (as determined by the Company in good faith) intended to reduce the likelihood that it would be substantively consolidated with the Company or any of its Restricted Subsidiaries (other than Special Purpose Securitization Subsidiaries) in the event the Company or any such Restricted Subsidiary becomes subject to a proceeding under the Bankruptcy Code (or other insolvency law) and (ii) any subsidiary of a Special Purpose Securitization Subsidiary.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable.

“Subordinated Indebtedness” means (a) with respect to an Issuer, any Indebtedness of such Issuer which is by its terms subordinated in right of payment to the Notes, and (b) with respect to any Subsidiary Guarantor, any Indebtedness of such Subsidiary Guarantor which is by its terms subordinated in right of payment to its Subsidiary Guarantee.

“Subsidiary” means, with respect to any Person, (1) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (2) any partnership, joint venture or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited

partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“Subsidiary Guarantee” means any guarantee of the obligations of the Issuers under this Indenture and the Notes by any Subsidiary Guarantor in accordance with the provisions of this Indenture.

“Subsidiary Guarantor” means any Subsidiary that Incurs a Subsidiary Guarantee; provided that upon the release or discharge of such Person from its Subsidiary Guarantee in accordance with this Indenture, such Subsidiary ceases to be a Subsidiary Guarantor.

“Suspension Period” means the period of time between a Covenant Suspension Event and the related Reversion Date.

“Tax Distributions” means any distributions described in Section 4.04(b)(xii).

“Third Party Funds” means any accounts or funds, or any portion thereof, received by the Company or any of its Subsidiaries as agent on behalf of third parties in accordance with a written agreement that imposes a duty upon the Company or one or more of its Subsidiaries to collect and remit those funds to such third parties.

“TIA” means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the date of this Indenture.

“Total Assets” means the total consolidated assets of the Company and the Restricted Subsidiaries, as shown on the most recent balance sheet of the Company, without giving effect to any impairment or amortization of the amount of intangible assets since March 31, 2017, calculated on a pro forma basis after giving effect to any subsequent acquisition or disposition of a Person or business.

“Total Indebtedness Leverage Calculation Date” has the meaning assigned in the “Total Indebtedness Leverage Ratio” definition.

“Total Indebtedness Leverage Ratio” means, with respect to any Person, at any date, the ratio of (i) Consolidated Total Indebtedness of such Person and its Restricted Subsidiaries as of such date of calculation (determined on a consolidated basis in accordance with GAAP) less the amount of cash and Cash Equivalents in excess of any Restricted Cash that would be stated on the balance sheet of such Person and its Restricted Subsidiaries and held by such Person and its Restricted Subsidiaries as of such date of determination to (ii) EBITDA of such Person for the four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date on which such additional Indebtedness is Incurred.

In the event that the Company or any Restricted Subsidiary Incurs, repays, repurchases or redeems any Indebtedness subsequent to the commencement of the period for which the Total Indebtedness Leverage Ratio is being calculated but prior to the event for which

the calculation of the Total Indebtedness Leverage Ratio is made (the “Total Indebtedness Leverage Calculation Date”), then the Total Indebtedness Leverage Ratio shall be calculated giving pro forma effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations that the Company or any Restricted Subsidiary has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Total Indebtedness Leverage Calculation Date (each, for purposes of this definition, a “pro forma event”) shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations and other operational changes, business realignment projects or initiatives, New Projects, restructurings or reorganizations (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation, operational change, business realignment project or initiative, New Project, restructuring or reorganization, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Total Indebtedness Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger, amalgamation, consolidation, operational change, business realignment project or initiative, New Project, restructuring or reorganization had occurred at the beginning of the applicable four-quarter period. If since the beginning of such period any Restricted Subsidiary is designated an Unrestricted Subsidiary or any Unrestricted Subsidiary is designated a Restricted Subsidiary, then the Total Indebtedness Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such designation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever pro forma effect is to be given to any pro forma event, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Company. Any such pro forma calculation may include adjustments appropriate, in the reasonable good faith determination of the Company as set forth in an Officer’s Certificate, to reflect (1) operating expense reductions and other operating improvements, synergies or cost savings reasonably expected to result from any relevant pro forma event (including, to the extent applicable, the Transactions) and (2) all adjustments of the type used in connection with the calculation of “Further Adjusted EBITDA” as set forth in the “Summary Historical Consolidated Financial and Other Information” portion of the “Summary” section of the Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period; provided that for all purposes of determining EBITDA hereunder (i) adjustments for operating expense reductions and other

operating improvements, synergies or cost savings shall not be more than 20% of EBITDA for the most recently ended four fiscal quarter period (calculated prior to giving effect to such capped adjustments (but, for the avoidance of doubt, after giving effect to other uncapped pro forma adjustments)) and (ii) actions resulting in operating expense reductions and other operating improvements, synergies or cost savings are, in each case, required to be taken or commenced or expected to be taken or commenced (in the good faith determination of the Company) within 24 months after the date any such transaction is consummated; provided that the limitations set forth in clauses (i) and (ii) shall not apply to any operating expense reductions, other operating improvements or synergies and adjustments resulting from the Transactions or otherwise pursuant to clause (2) above, and information and calculations supporting them in reasonable detail.

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Total Indebtedness Leverage Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a Eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

For purposes of making the computation referred to above, in giving effect to each New Project which commences operations and records not less than one full fiscal quarter's operations during such period, the operating results of such New Project shall be annualized on a straight line basis during such period, taking into account any seasonality adjustments determined by the Company in good faith.

For purposes of this definition, any amount in a currency other than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

"Transactions" means the exchange offer for the Old Notes as described in the Offering Memorandum.

"Treasury Rate" means, as of the applicable redemption date, as determined by the Issuers, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available on the second Business Day prior to such redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such redemption

date to December 1, 2022; *provided, however*, that if the period from such redemption date to December 1, 2022, as applicable, is less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“Trust Officer” means:

(1) any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject, and

(2) who shall have direct responsibility for the administration of this Indenture.

“Trustee” means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

“Uniform Commercial Code” or “UCC” means the New York Uniform Commercial Code (or other applicable UCC) as in effect from time to time.

“Unrestricted Subsidiary” means:

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Company in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary;

The Company may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless at the time of such designation such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, the Company or any other Restricted Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated, in each case at the time of such designation; provided, however, that (i) the Subsidiary to be so designated and its Subsidiaries do not at the time of designation have and do not thereafter Incur any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any of the Restricted Subsidiaries unless otherwise permitted under Section 4.04 and (ii) the Company may not designate any Subsidiary of the Company to be an Unrestricted Subsidiary during any Suspension Period; *provided, further, however*, that either:

(a) the Subsidiary to be so designated has total consolidated assets of \$1,000 or less; or

(b) if such Subsidiary has consolidated assets greater than \$1,000, then such designation would be permitted under Section 4.04.

The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided, however*, that immediately after giving effect to such designation:

(x) (1) the Company could Incur \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.03(a) or (2) the Fixed Charge Coverage Ratio of the Issuers and the Restricted Subsidiaries would be no less than such ratio immediately prior to such designation, in each case on a *pro forma* basis taking into account such designation, and

(y) no Event of Default shall have occurred and be continuing.

Any such designation by the Company shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors or any committee thereof of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Government Obligations" means securities that are:

(1) direct obligations of the United States of America denominated in U.S. dollars for the timely payment of which its full faith and credit is pledged, or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

"Voting Stock" of any Person as of any date means the Equity Interests of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

"Wholly Owned Restricted Subsidiary" is any Wholly Owned Subsidiary that is a Restricted Subsidiary.



“Wholly Owned Subsidiary” of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares required pursuant to applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

Section 1.02 Other Definitions.

<b><u>Term</u></b>	<b><u>Section</u></b>
\$	Section 1.03(j)
<u>Affiliate Transaction</u>	Section 4.07(a)
<u>Agent Members</u>	Appendix
<u>Asset Sale Offer</u>	Section 4.06(b)(ii)
<u>Bankruptcy Law</u>	Section 6.01(k)
<u>Change of Control Offer</u>	Section 4.08(b)
<u>Clearstream</u>	Appendix
<u>Co-Issuer</u>	Preamble
<u>Company</u>	Preamble
<u>covenant defeasance option</u>	Section 8.01(b)
<u>Covenant Suspension Event</u>	Section 4.15
<u>Custodian</u>	Section 6.01(k)
<u>Deemed Date</u>	Section 4.03(c)(3)
<u>Euroclear</u>	Appendix
<u>Event of Default</u>	Section 6.01
<u>Excess Proceeds</u>	Section 4.06(b)(ii)
<u>Fixed Charge Calculation Date</u>	Other
<u>Global Notes</u>	Appendix
<u>Guaranteed Obligations</u>	Section 12.01(a)
<u>Increased Amount</u>	Section 4.12(c)
<u>Initial Notes</u>	Preamble
<u>Issuers</u>	Preamble
<u>legal defeasance option</u>	Section 8.01(b)
<u>Notes</u>	Preamble
<u>Notice of Default</u>	Section 6.01(k)
<u>Offer Period</u>	Section 4.06(d)
OFFSHORE TRANSACTION	Appendix
Old Notes Indenture	Other
<u>Paying Agent</u>	Section 2.04(a)
<u>Permitted Jurisdiction</u>	Section 5.01(a)(vi)
<u>primary obligations</u>	Other
<u>primary obligor</u>	Other
<u>Pro Forma EBITDA Calculation Date</u>	Other
<u>pro forma event</u>	Other
<u>protected purchaser</u>	Section 2.08
QUALIFIED INSTITUTIONAL BUYER	Appendix
Refinancing Indebtedness	Section 4.03(b)(xv)
<u>Refunding Capital Stock</u>	Section 4.04(b)(ii)
<u>Registrar</u>	Section 2.04(a)

<u>Term</u>	<u>Section</u>
<u>Regulation S Global Notes</u>	Appendix
<u>Regulation S Permanent Global Note</u>	Appendix
<u>Regulation S Temporary Global Note</u>	Appendix
<u>Reporting Entity</u>	Section 4.02(b)
<u>Restricted Payments</u>	Section 4.04(a)
<u>Retired Capital Stock</u>	Section 4.04(b)(ii)
<u>Reversion Date</u>	Section 4.15
<u>Rule 144A Global Notes</u>	Appendix
<u>Second Commitment</u>	Section 4.06(b)(ii)
<u>Secured Leverage Calculation Date</u>	Other
<u>SECURITIES ACT</u>	Appendix
<u>Senior Secured Leverage Calculation Date</u>	Other
<u>Successor Co-Issuer</u>	Section 5.01(b)(i)
<u>Successor Company</u>	Section 5.01(a)(i)
<u>Successor Subsidiary Guarantor</u>	Section 5.01(c)(i)
<u>Suspended Covenants</u>	Section 4.15
<u>Total Indebtedness Leverage Calculation Date</u>	Other
<u>Transfer</u>	Section 5.01(c)(ii)
<u>Trustee</u>	Other
<u>U.S. dollars</u>	Section 1.03(j)
U.S. PERSON	Appendix
UNITED STATES	Appendix

Section 1.03 Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;
- (d) “including” means including without limitation;
- (e) words in the singular include the plural and words in the plural include the singular;
- (f) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;
- (g) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the Company dated such date prepared in accordance with GAAP;
- (h) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater;

(i) unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP; and

(j) “\$” and “U.S. dollars” each refer to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts.

Section 1.04 No Incorporation by Reference of Trust Indenture Act. This Indenture is not qualified under the TIA, and the TIA shall not apply to or in any way govern the terms of this Indenture. As a result, no provisions of the TIA are incorporated into this Indenture unless expressly incorporated pursuant to this Indenture.

## ARTICLE II

### THE NOTES

Section 2.01 Amount of Notes. The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture on the Issue Date is \$982,598,000.

The Issuers may from time to time after the Issue Date issue Additional Notes under this Indenture in an unlimited principal amount, so long as (i) the Incurrence of the Indebtedness represented by such Additional Notes is at such time permitted by Section 4.03 and the Liens with respect thereto are permitted by Section 4.12 and (ii) such Additional Notes are issued in compliance with the other applicable provisions of this Indenture. With respect to any Additional Notes issued after the Issue Date (except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.07, 2.08, 2.09, 3.08, 4.06(e), 4.08(c) or Appendix A), there shall be (a) established in or pursuant to a resolution of the Board of Directors of each Issuer and (b) (i) set forth or determined in the manner provided in an Officer’s Certificate or (ii) established in one or more indentures supplemental hereto, prior to the issuance of such Additional Notes:

(1) the aggregate principal amount of such Additional Notes which may be authenticated and delivered under this Indenture;

(2) the issue price and issuance date of such Additional Notes, including the date from which interest on such Additional Notes shall accrue; and

(3) if applicable, that such Additional Notes shall be issuable in whole or in part in the form of one or more Global Notes and, in such case, the respective depositaries for such Global Notes, the form of any legend or legends which shall be borne by such Global Notes in addition to or in lieu of those set forth in Exhibit A hereto and any circumstances in addition to or in lieu of those set forth in Section 2.2 of Appendix A in which any such Global Note may be exchanged in whole or in part for Additional Notes registered, or any transfer of such Global Note in whole or in part may be registered, in the name or names of Persons other than the depositary for such Global Note or a nominee thereof.

If any of the terms of any Additional Notes are established by action taken pursuant to a resolution of the Board of Directors, a copy of an appropriate record of such action shall be certified by the Secretary or any Assistant Secretary of each Issuer and delivered to the Trustee at or prior to the delivery of the Officer's Certificate or an indenture supplemental hereto setting forth the terms of the Additional Notes.

The Initial Notes and any Additional Notes may, at the Issuers' option, be treated as a single class for all purposes under this Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase; *provided* that if the Additional Notes are not fungible with the Initial Notes for U.S. federal income tax purposes, the Additional Notes will have a separate CUSIP number, if applicable.

Section 2.02 Form and Dating. Provisions relating to the Initial Notes are set forth in Appendix A, which is hereby incorporated in and expressly made a part of this Indenture. The (i) Initial Notes and the Trustee's certificate of authentication and (ii) any Additional Notes and the Trustee's certificate of authentication shall each be substantially in the form of Exhibit A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Issuers or any Subsidiary Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Issuer). Each Note shall be dated the date of its authentication. The Notes shall be issuable only in registered form without interest coupons and in minimum denominations of \$2,000 and any integral multiples of \$1,000 in excess thereof.

Section 2.03 Execution and Authentication. The Trustee shall authenticate and make available for delivery upon a written order of the Issuers signed by one Officer of each Issuer (a) Initial Notes for original issue on the date hereof in an aggregate principal amount of \$982,598,000 and (b) subject to the terms of this Indenture, Additional Notes in an aggregate principal amount to be determined at the time of issuance and specified therein. Such order shall specify the amount of separate Note certificates to be authenticated, the principal amount of each of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated, whether the Notes are to be Initial Notes or Additional Notes, the registered holder of each of the Notes and delivery instructions. Notwithstanding anything to the contrary in this Indenture or Appendix A, any issuance of Additional Notes after the Issue Date shall be in a principal amount of at least \$2,000 and integral multiples of \$1,000 in excess thereof.

One Officer shall sign the Notes for each of the Issuers by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee may appoint one or more authenticating agents reasonably acceptable to the Company to authenticate the Notes. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Issuer. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

Section 2.04 Registrar and Paying Agent.

(a) The Issuers shall maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange (the “Registrar”) and (ii) an office or agency where Notes may be presented for payment (the “Paying Agent”). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Issuers may have one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrars. The term “Paying Agent” includes the Paying Agent and any additional paying agents. The Issuers initially appoints the Trustee as Registrar, Paying Agent and the Notes Custodian with respect to the Global Notes.

(b) The Issuers may enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of any such agent. If the Issuers fail to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any of its domestically organized Subsidiaries may act as Paying Agent or Registrar.

(c) The Issuers may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; *provided, however*, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor Registrar or Paying Agent, as the case may be, as evidenced by an appropriate agreement entered into by the Issuers and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Issuers and the Trustee; *provided, however*, that the Trustee may resign as Paying Agent or Registrar only if the Trustee also resigns as Trustee in accordance with Section 7.08.

Section 2.05 Paying Agent to Hold Money in Trust. Prior to each due date of the principal of and interest on any Note, the Issuers shall deposit with each Paying Agent (or if the Company or a Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest when so becoming due. The Issuers shall require each Paying Agent (other than the Trustee) to agree in writing that a Paying Agent shall hold in trust for the benefit of holders or the Trustee all money held by a Paying Agent for the payment of principal of and interest on the Notes, and shall notify the Trustee of any default by the Issuers in making any such payment. If the Company or a Subsidiary of the Company acts as Paying Agent, it shall segregate the money held by it as

Paying Agent and hold it in trust for the benefit of the Persons entitled thereto. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.05, a Paying Agent shall have no further liability for the money delivered to the Trustee.

Section 2.06 Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of holders. If the Trustee is not the Registrar, the Issuers shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of holders.

Section 2.07 Transfer and Exchange. The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer and in compliance with Appendix A. When a Note is presented to the Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if its requirements therefor are met. When Notes are presented to the Registrar with a request to exchange them for an equal principal amount of Notes of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate Notes at the Registrar's request. The Issuers may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section 2.07. The Issuers shall not be required to make, and the Registrar need not register, transfers or exchanges of Notes selected for redemption (except, in the case of Notes to be redeemed in part, the portion thereof not to be redeemed) or transfers or exchanges of any Notes for a period of 15 days before a selection of Notes to be redeemed or between a record date and the related payment date.

Prior to the due presentation for registration of transfer of any Note, the Issuers, the Subsidiary Guarantors, the Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest, if any, on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuers, the Subsidiary Guarantors, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any holder of a beneficial interest in a Global Note shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Note may be effected only through a book-entry system maintained by (a) the holder of such Global Note (or its agent) or (b) any holder of a beneficial interest in such Global Note, and that ownership of a beneficial interest in such Global Note shall be required to be reflected in a book entry.

All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depository participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

None of the Trustee, Registrar or Paying Agent shall have any responsibility for any actions taken or not taken by the Depository.

Section 2.08 Replacement Notes. If a mutilated Note is surrendered to the Registrar or if the holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuers shall issue and the Trustee shall, upon receipt of a written order of the Issuers, authenticate a replacement Note if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the holder (a) satisfies the Issuers and the Trustee within a reasonable time after such holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuers and the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a “protected purchaser”) and (c) satisfies any other reasonable requirements of the Issuers and the Trustee. If required by the Trustee or the Issuers, such holder shall furnish an indemnity bond sufficient in the judgment of the Trustee, with respect to the Trustee, and the Issuers, with respect to the Issuers, to protect the Issuers, the Trustee, the Paying Agent and the Registrar, as applicable, from any loss or liability that any of them may suffer if a Note is replaced and subsequently presented or claimed for payment. The Issuers and the Trustee may charge the holder for their expenses in replacing a Note (including without limitation, attorneys’ fees and disbursements in replacing such Note). In the event any such mutilated, lost, destroyed or wrongfully taken Note has become or is about to become due and payable, the Issuers in their discretion may pay such Note instead of issuing a new Note in replacement thereof.

Every replacement Note is an additional obligation of the Issuers.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Notes.

Section 2.09 Outstanding Notes. Notes outstanding at any time are all Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.09 as not outstanding. Subject to Section 13.06, a Note does not cease to be outstanding because the Issuers or an Affiliate of the Issuers holds the Note.

If a Note is replaced pursuant to Section 2.08 (other than a mutilated Note surrendered for replacement), it ceases to be outstanding unless the Trustee and the Issuers receive proof satisfactory to them that the replaced Note is held by a protected purchaser. A

mutilated Note ceases to be outstanding upon surrender of such Note and replacement thereof pursuant to Section 2.08.

If a Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, and no Paying Agent is prohibited from paying such money to the holders on that date pursuant to the terms of this Indenture, then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

Section 2.10 Cancellation. The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and each Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. Upon receipt of a written order of the Issuers, the Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled Notes in accordance with its customary procedures. The Issuers may not issue new Notes to replace Notes they have redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Notes in place of canceled Notes other than pursuant to the terms of this Indenture.

Section 2.11 Defaulted Interest. If the Issuers default in a payment of interest on the Notes, the Issuers shall pay the defaulted interest then borne by the Notes (*plus* interest on such defaulted interest to the extent lawful) in any lawful manner. The Issuers may pay the defaulted interest to the Persons who are holders on a subsequent special record date. The Issuers shall fix or cause to be fixed any such special record date and payment date, which specified record date shall not be less than 10 days prior to the payment date for such defaulted interest, and shall promptly mail or cause to be mailed, or delivered electronically if held by the Depository, to each affected holder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid. The Issuers shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on the Notes and the date of the proposed payment, and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest, or make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.11.

Section 2.12 CUSIP Numbers, ISINs, etc. The Issuers in issuing the Notes may use CUSIP numbers, ISINs and “Common Code” numbers (if then generally in use), and the Trustee shall use any such CUSIP numbers, ISINs and “Common Code” numbers in notices of redemption as a convenience to holders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the Notes or as contained in any notice of a redemption that reliance may be placed only on the other identification numbers printed on the Notes and that any such redemption shall not be affected by any defect in or omission of such numbers. The Issuers shall advise the Trustee of any change in any such CUSIP numbers, ISINs and “Common Code” numbers.



Section 2.13 Maturity. The Notes shall mature on the earlier of (i) July 15, 2026 and (ii) July 12, 2023 if, on such date, any amount of the Old Notes or the Old Term Loans remains outstanding. If at any time no amount of the Old Notes or the Old Term Loans remains outstanding, such that the maturity date of the Notes will fall on July 15, 2026, the Issuers shall promptly (i) mail, or otherwise deliver in accordance with the procedures of the Depository, to the holders a notice of such maturity date and (ii) deliver to the Trustee an Officer's Certificate setting forth such maturity date.

Section 2.14 Calculation of Principal Amount of Notes. The aggregate principal amount of the Notes, at any date of determination, shall be the principal amount of the Notes at such date of determination. With respect to any matter requiring consent, waiver, approval or other action of the holders of a specified percentage of the principal amount of all the Notes, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of Notes, the holders of which have so consented, by (b) the aggregate principal amount, as of such date of determination, of the Notes then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.09 and Section 13.06. Any calculation of the Applicable Premium made pursuant to this Indenture or the Notes shall be made by the Company and delivered to the Trustee pursuant to an Officer's Certificate.

### ARTICLE III

#### REDEMPTION

Section 3.01 Redemption. The Notes may be redeemed, in whole or from time to time in part, subject to the conditions and at the redemption prices set forth in Paragraph 5 of the form of Note set forth in Exhibit A hereto, which is hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest, if any, to, but excluding, the redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

Section 3.02 Applicability of Article. Redemption of Notes at the election of the Issuers or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article III.

Section 3.03 Notices to Trustee. If the Issuers elect to redeem Notes pursuant to the optional redemption provisions of Paragraph 5 of the Note, the Issuers shall notify the Trustee in an Officer's Certificate of (i) the Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the redemption price. The Issuers shall give notice to the Trustee provided for in this Section 3.03 at least 30 days but not more than 60 days before a redemption date if the redemption is a redemption pursuant to Paragraph 5 of the Note. The Issuers may also include a request in such Officer's Certificate that the Trustee give the notice of redemption in the Issuers' name and at its expense and setting forth the information to be stated in such notice as provided in Section 3.05. Any such notice may be canceled if written notice from the Issuers of such cancellation is actually received by the Trustee on the Business Day immediately prior to notice of such redemption being mailed, or delivered electronically if held by the Depository, to any holder or

otherwise delivered in accordance with the applicable procedures of the Depository and shall thereby be void and of no effect. The Issuers shall deliver to the Trustee such documentation and records as shall enable the Trustee to select the Notes to be redeemed pursuant to Section 3.04.

Section 3.04 Selection of Notes to Be Redeemed. In the case of any partial redemption, selection of the Notes for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed (and the Issuers shall notify the Trustee of any such listing), or if the Notes are not so listed, on a pro rata basis to the extent practicable or by lot or by such other method as the Trustee shall deem fair and appropriate (and, in such manner that complies with the requirements of the Depository, if applicable); *provided* that no Notes of \$2,000 or less shall be redeemed in part. The Trustee shall make the selection from outstanding Notes not previously called for redemption. The Trustee may select for redemption portions of the principal of Notes that have denominations larger than \$2,000. Notes and portions of them the Trustee selects shall be in amounts of \$2,000 or integral multiples of \$1,000 in excess thereof. Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Issuers promptly of the Notes or portions of Notes to be redeemed.

Section 3.05 Notice of Optional Redemption.

(a) At least 30 but not more than 60 days before a redemption date pursuant to Paragraph 5 of the Note, the Issuers shall mail or cause to be mailed by first-class mail at its registered address, or otherwise deliver in accordance with the procedures of the Depository, a notice of redemption to each holder whose Notes are to be redeemed (with a copy to the Trustee), except that redemption notices may be mailed or otherwise delivered more than 60 days prior to the redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Article VIII.

Any such notice shall identify the Notes to be redeemed and shall state:

- (i) the redemption date;
- (ii) the redemption price and the amount of accrued interest to the redemption date;
- (iii) the name and address of the Paying Agent;
- (iv) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price, *plus* accrued and unpaid interest, if any;
- (v) if fewer than all the outstanding Notes are to be redeemed, the certificate numbers and principal amounts of the particular Notes to be redeemed, the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption;
- (vi) that, unless the Issuers default in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this

Indenture, interest on Notes (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(vii) the CUSIP number, ISIN and/or “Common Code” number, if any, printed on the Notes being redeemed;

(viii) that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN and/or “Common Code” number, if any, listed in such notice or printed on the Notes;

(ix) if the redemption is subject to the satisfaction of one or more conditions precedent, the notice thereof shall describe each such condition and, if applicable, shall state that, in the Issuers’ discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date as so delayed; and

(x) at the Issuers’ option, that the payment of the redemption price and performance of the Issuers’ obligations with respect to such redemption may be performed by another Person.

Notice of any redemption upon any corporate transaction or other event (including any Equity Offering, incurrence of Indebtedness, Change of Control or other transaction) may be given prior to the completion thereof. In addition, any redemption or notice thereof may, at the Issuers’ discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a corporate transaction or other event.

(b) At the Issuers’ request, the Trustee shall deliver the notice of redemption in the Issuers’ name and at the Issuers’ expense. In such event, the Issuers shall notify the Trustee of such request at least three (3) Business Days (or such shorter period as is acceptable to the Trustee) prior to the date such notice is to be provided to holders.

Section 3.06 Effect of Notice of Redemption. Once notice of redemption is mailed or otherwise delivered in accordance with Section 3.05, Notes called for redemption become due and payable on the redemption date and at the redemption price stated in the notice, except as provided in the penultimate paragraph of Paragraph 5 of the Note or Section 3.05(a). Upon surrender to the Paying Agent, such Notes shall be paid at the redemption price stated in the notice, *plus* accrued and unpaid interest, if any, to, but excluding, the redemption date; *provided, however*, that if the redemption date is after a regular Record Date and on or prior to the next Interest Payment Date, the accrued interest shall be payable to the holder of the redeemed Notes registered on the relevant Record Date. Failure to give notice or any defect in the notice to any holder shall not affect the validity of the notice to any other holder.

Section 3.07 Deposit of Redemption Price. With respect to any Notes, prior to 10:00 a.m., New York City time, on the redemption date, the Issuers shall deposit with the Paying Agent (or, if the Company or a Subsidiary of the Company is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued and unpaid

interest, if any, on all Notes or portions thereof to be redeemed on that date other than Notes or portions of Notes called for redemption that have been delivered by the Issuers to the Trustee for cancellation. On and after the redemption date, interest shall cease to accrue on Notes or portions thereof called for redemption so long as the Issuers have deposited with the Paying Agent funds sufficient to pay the principal of, *plus* accrued and unpaid interest, if any, to but excluding the redemption date, on, the Notes or portions thereof to be redeemed, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture.

Section 3.08 Notes Redeemed in Part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note shall state the portion of the principal amount thereof to be redeemed. Upon surrender and cancellation of a Note that is redeemed in part, the Issuers shall execute and the Trustee shall authenticate for the holder (at the Issuers' expense) a new Note equal in principal amount to the unredeemed portion of the Note surrendered and cancelled (or if the Note is a Global Note, an adjustment shall be made to the "Schedule of Increases or Decreases in Global Note" attached thereto).

## ARTICLE IV

### COVENANTS

Section 4.01 Payment of Notes. The Issuers shall promptly pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. An installment of principal of or interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds as of 12:00 p.m. New York City time money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the holders on that date pursuant to the terms of this Indenture.

The Issuers shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate borne by the Notes to the extent lawful.

#### Section 4.02 Reports and Other Information.

(a) For so long as any Notes are outstanding, the Issuers shall deliver to the Trustee a copy of all of the information and reports referred to below:

(i) within 15 days after the time period specified in the SEC's rules and regulations for non-accelerated filers, annual reports of the Reporting Entity (as defined below) for such fiscal year containing the information that would have been required to be contained in an annual report on Form 10-K (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC;

(ii) within 15 days after the time period specified in the SEC's rules and regulations for non-accelerated filers, quarterly reports of the Reporting Entity for such fiscal quarter containing the information that would have been required to be contained in a quarterly report on Form 10-Q (or any successor or comparable form) if

the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC; and

(iii) within 15 days after the time period specified in the SEC's rules and regulations for filing current reports on Form 8-K, current reports of the Reporting Entity containing substantially all of the information that would be required to be filed in a current report on Form 8-K under the Exchange Act on the Issue Date pursuant to Sections 1, 2 and 4, Items 5.01, 5.02 (a),(b) and (c) and Item 9.01(a) and (b) (only to the extent relating to any of the foregoing) of Form 8-K if the Reporting Entity had been a reporting company under the Exchange Act; *provided, however*, that no such current reports (or items thereof or all or a portion of the financial statements that would have otherwise been required thereby) will be required to be delivered (or included) if the Company determines in its good faith judgment that such event (or information) is not material to holders or the business, assets, operations, financial position or prospects of the Company and its Restricted Subsidiaries, taken as a whole.

In addition to providing such information to the Trustee, the Issuers shall make available to the holders, prospective investors, market makers affiliated with any initial purchaser of the Notes and securities analysts the information required to be provided pursuant to the foregoing clauses (i), (ii) and (iii), by posting such information to its website (or the website of any of the Company's parent companies, including the Reporting Entity) or on IntraLinks or any comparable online data system or website. If at any time the Company or any direct or indirect parent of the Company has made a good faith determination to file a registration statement with the SEC with respect to an initial public offering of such entity's Capital Stock, the Issuers will not be required to disclose any information or take any actions that, in the good faith view of the Company, would violate the securities laws or the SEC's "gun jumping" rules.

Notwithstanding the foregoing, (A) neither the Company nor another Reporting Entity will be required to deliver any information, certificates or reports that would otherwise be required by (i) Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (ii) Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein, (B) such reports will not be required to contain financial information required by Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X or include any exhibits or certifications required by Form 10-K, Form 10-Q or Form 8-K (or any successor or comparable forms) or related rules under Regulation S-K and (C) such reports shall be subject to exceptions, exclusions and other differences consistent with the presentation of financial and other information in the Offering Memorandum and shall not be required to present compensation or beneficial ownership information.

(b) The financial statements, information and other documents required to be provided as described in this Section 4.02 may be those of (i) the Company or (ii) any direct or indirect parent of the Company (any such entity, a "Reporting Entity"), so long as in the case of clause (ii) such direct or indirect parent of the Company shall not conduct, transact or otherwise engage, or commit to conduct, transact or otherwise engage, in any material business or operations other than its direct or indirect ownership of all of the Equity Interests in, and its management of, the Company; *provided* that, if the financial information so delivered relates to

such direct or indirect parent of the Company, the same is accompanied by a reasonably detailed description of the quantitative differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand.

(c) In addition, the Issuers will make such information available to prospective investors upon request. The Issuers have agreed that, for so long as any Notes remain outstanding during any period when neither it nor another Reporting Entity is subject to Section 13 or 15(d) of the Exchange Act, or otherwise permitted to furnish the SEC with certain information pursuant to Rule 12g3-2(b) of the Exchange Act, they will furnish to the holders of the Notes and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(d) Notwithstanding the foregoing, the Issuers will be deemed to have delivered such reports and information referred to in this Section 4.02 to the holders, prospective investors, market makers, securities analysts and the Trustee for all purposes of this Indenture if the Company or another Reporting Entity has filed such reports with the SEC via the EDGAR filing system (or any successor system) and such reports are publicly available. In addition, the requirements of this Section 4.02 shall be deemed satisfied and the Issuers will be deemed to have delivered such reports and information referred to this Section 4.02 to the Trustee, holders, prospective investors, market makers and securities analysts for all purposes of this Indenture by the posting of reports and information that would be required to be provided on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity). The Trustee shall have no obligation to monitor whether the Issuers post such reports, information and documents on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity) or the SEC's EDGAR service, or collect any such information from the Company's (or any of the Company's parent companies) website or the SEC's EDGAR service.

(e) The Company will also hold quarterly conference calls, beginning with the first full fiscal quarter ending after the Issue Date, for all holders of the Notes, prospective investors, market makers affiliated with any initial purchaser of the Notes and securities analysts to discuss such financial information no later than ten Business Days after the distribution of such information required by clauses (i) or (ii) of Section 4.02(a) and, prior to the date of each such conference call, will announce the time and date of such conference call and either include all information necessary to access the call or inform holders of the Notes, prospective investors, market makers affiliated with any initial purchaser of the Notes and securities analysts how they can obtain such information, including, without limitation, the applicable password or login information (if applicable).

(f) Delivery of reports, information and documents to the Trustee pursuant to this Section 4.02 is for informational purposes only, and the information and the Trustee's receipt of the foregoing shall not constitute actual or constructive notice of any information contained therein, or determinable from information contained therein, including the Issuers' compliance with any of its covenants thereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provision of this Indenture or to

ascertain the correctness or otherwise of the information or the statements contained therein. In addition, the Trustee shall have no liability or responsibility for the content, filing or timeliness of any report delivered or filed under or in connection with this Indenture or the transactions contemplated hereunder, and the Trustee shall have no duty to participate in or monitor any conference calls.

Section 4.03 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) (i) The Company shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock; and (ii) the Company shall not permit any of the Restricted Subsidiaries (other than a Subsidiary Guarantor) to issue any shares of Preferred Stock; *provided, however*, that an Issuer and any Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary of the Company that is not an Issuer or a Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock or issue shares of Preferred Stock, in each case if the Fixed Charge Coverage Ratio of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00 determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been Incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four-quarter period; *provided, further*, that any Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor may not incur Indebtedness or issue shares of Disqualified Stock or Preferred Stock in excess of an amount, together with any Refinancing Indebtedness thereof pursuant to Section 4.03(b)(xv), equal to, after giving *pro forma* effect to such incurrence or issuance (including *pro forma* effect to the application of the net proceeds therefrom), the greater of \$40 million and 0.12 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date on which such additional Indebtedness is Incurred, or Disqualified Stock or Preferred Stock is issued, and after giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount).

(b) The limitations set forth in Section 4.03(a) shall not apply to:

(i) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness (including under any Credit Agreement and the issuance and creation of letters of credit and bankers' acceptances thereunder, Indebtedness represented by the Old Notes and the guarantees thereof and Indebtedness represented by the Notes and the Subsidiary Guarantees) up to an aggregate principal amount outstanding at the time of Incurrence that does not exceed an amount equal to the sum of (x) \$1,675 million plus (y) an additional aggregate principal amount of Consolidated Total Indebtedness that at the time of Incurrence does not cause the Senior Secured Leverage Ratio for the most

recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee, determined on a pro forma basis, to exceed 3.75 to 1.00; provided that for purposes of determining the amount of Indebtedness that may be incurred under this clause (b)(i)(y), all Indebtedness incurred under this clause (b)(i) shall be treated as Secured Indebtedness constituting First-Priority Obligations;

(ii) [Reserved];

(iii) Indebtedness existing on the Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.03(b));

(iv) (1) Indebtedness (including Capitalized Lease Obligations) Incurred by the Company or any Restricted Subsidiary, Disqualified Stock issued by the Company or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance (whether prior to or within 270 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) in an aggregate principal amount that, when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Stock or Preferred Stock then outstanding and Incurred pursuant to this clause (iv)(1), together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) below, does not exceed the greater of \$75 million and 0.22 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date on which such additional Indebtedness is Incurred or Disqualified Stock or Preferred Stock is issued and after giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount); and (2) Capitalized Lease Obligations or other obligations or deferrals attributable to capital spending or other funds made available by suppliers in connection with any sale and leaseback arrangements not in violation of this Indenture;

(v) Indebtedness Incurred by the Company or any Restricted Subsidiary owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance to Holdings, the Company or any Restricted Subsidiary, pursuant to reimbursement or indemnification obligations to such Person, in each case, provided in the ordinary course of business or consistent with past practices or industry practices;

(vi) Indebtedness arising from agreements of the Company or any Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business, assets or a Restricted Subsidiary, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or a Restricted Subsidiary for the purpose of financing such acquisition, in each case, to the extent such obligation or transaction is permitted by this Indenture;



(vii) Indebtedness of the Company to a Restricted Subsidiary; *provided* that (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of the Company and its Subsidiaries) any such Indebtedness owed to a Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor is subordinated in right of payment to the obligations of the Issuers under the Notes; *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vii);

(viii) shares of Preferred Stock of a Restricted Subsidiary issued to the Company or another Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary that holds such shares of Preferred Stock of another Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Company or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (viii);

(ix) Indebtedness of a Restricted Subsidiary to the Company or another Restricted Subsidiary; *provided* that if a Subsidiary Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of the Company and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Subsidiary Guarantee of such Subsidiary Guarantor; *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary holding such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (ix);

(x) Hedging Obligations that are not incurred for speculative purposes but (A) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (B) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (C) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales and, in each case, extensions or replacements thereof;

(xi) Indebtedness of the Company and the Restricted Subsidiaries in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion

guarantees and similar obligations, in each case, reasonably required in the conduct of the business (giving effect to any growth or expansion of such business permitted hereunder), including those incurred to secure health, safety, insurance and environmental obligations of the Company and the Restricted Subsidiaries as conducted in accordance with good and prudent business industry practices and otherwise as permitted by this Indenture;

(xii) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and Incurred pursuant to this clause (xii), together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) below, does not exceed the greater of \$100 million and 0.29 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date on which such additional Indebtedness is Incurred, or Disqualified Stock or Preferred Stock is issued, and after giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xiii) Indebtedness or Disqualified Stock of the Company or any Restricted Subsidiary and Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference at any time outstanding, together with Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) hereof, not greater than an amount equal to 100.0% of the amount of net cash proceeds received by the Company and its Restricted Subsidiaries since immediately after the Issue Date, in each case from the issue or sale of Equity Interests of the Company or any direct or indirect parent entity of the Company (which proceeds are contributed to the Company or any Restricted Subsidiary) or cash contributed to the capital of the Company (in each case other than proceeds of Disqualified Stock or sales of Equity Interests to, or contributions received from, the Company or any of its Subsidiaries) to the extent such net cash proceeds or cash have not been applied to increase the calculation of the Cumulative Credit pursuant to clauses (2) or (3) of the definition of "Cumulative Credit" or applied to make Restricted Payments specified in Sections 4.04(b)(ii), (iv), (ix), (x) or (xxi) or to make Permitted Investments specified in clauses (9), (10), (11) or (16) of the definition of "Permitted Investments" (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xiv) any guarantee by the Company or any Restricted Subsidiary of Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the Incurrence of such Indebtedness or other obligations by the Company or such Restricted Subsidiary is permitted under the terms of this Indenture; *provided* that (A) if such Indebtedness is by its express terms subordinated in right of payment to the Notes or the Subsidiary Guarantee of the Company or such Restricted Subsidiary, as applicable, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Notes or such Subsidiary Guarantee, as applicable, substantially to the same extent as such Indebtedness is subordinated to the Notes or the Subsidiary

Guarantee, as applicable, and (B) if such guarantee is of Indebtedness of the Company, such guarantee is Incurred in accordance with, or not in contravention of, Section 4.11 solely to the extent Section 4.11 is applicable;

(xv) the Incurrence by the Company or any of the Restricted Subsidiaries of Indebtedness or Disqualified Stock or Preferred Stock of a Restricted Subsidiary that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued as permitted under Section 4.03(a) and clauses (i)(y), (ii), (iii), (iv)(1), (xii), (xiii), (xv), (xvi), (xx) and (xxiii) of this Section 4.03(b) up to the outstanding principal amount (or, if applicable, the liquidation preference face amount, or the like) or, if greater, committed amount (only to the extent the committed amount could have been Incurred on the date of initial Incurrence and was deemed Incurred at such time for the purposes of this Section 4.03) of such Indebtedness or Disqualified Stock or Preferred Stock, in each case at the time such Indebtedness was Incurred or Disqualified Stock or Preferred Stock was issued pursuant to Section 4.03(a) or clauses (i)(y), (ii), (iii), (iv)(1), (xii), (xiii), (xv), (xvi), (xx) and (xxiii) of this Section 4.03(b), or any Indebtedness, Disqualified Stock or Preferred Stock Incurred to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock, plus any additional Indebtedness, Disqualified Stock or Preferred Stock Incurred to pay premiums (including tender premiums), accrued and unpaid interest, expenses, defeasance costs and fees in connection therewith (subject to the following proviso, “Refinancing Indebtedness”) prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness:

(1) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness, Disqualified Stock and Preferred Stock being refunded or refinanced that were due on or after the date that is one year following the last maturity date of any Notes then outstanding were instead due on such date (*provided* that this subclause (1) will not apply to any refunding or refinancing of any Secured Indebtedness constituting First-Priority Obligations);

(2) to the extent such Refinancing Indebtedness refinances (a) Indebtedness subordinated in right of payment to the Notes or a Subsidiary Guarantee, as applicable, such Refinancing Indebtedness is subordinated in right of payment to the Notes or the Subsidiary Guarantee, as applicable, or (b) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock; and

(3) shall not include (x) Indebtedness of a Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor that refinances Indebtedness of an Issuer or a Subsidiary Guarantor, or (y) Indebtedness of the Company or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary;

(xvi) Indebtedness, Disqualified Stock or Preferred Stock of (A) the Company or any Restricted Subsidiary incurred to finance an acquisition or (B) Persons that are acquired by the Company or any Restricted Subsidiary or merged, consolidated or amalgamated with or into the Company or any Restricted Subsidiary in accordance with the terms of this Indenture; *provided* that after giving effect to such acquisition or merger, consolidation or amalgamation, either:

(1) the Company would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.03(a); or

(2) the Fixed Charge Coverage Ratio of the Company would be no less than immediately prior to such acquisition or merger, consolidation or amalgamation;

*provided further* that the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not an Issuer or a Subsidiary Guarantor incurred under this clause (xvi) (solely if incurred in contemplation of such acquisition or merger, consolidation or amalgamation), together with any Refinancing Indebtedness in respect thereof incurred under clause (xv) hereof, shall not exceed the greater of \$40 million and 0.12 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such date on which such additional Indebtedness is Incurred and after giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xvii) Indebtedness in connection with Permitted Securitization Financings;

(xviii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business (*provided* that such Indebtedness is extinguished within five Business Days of its Incurrence) or other cash management services in the ordinary course of business;

(xix) Indebtedness of the Company or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to Bank Indebtedness, in a principal amount not in excess of the stated amount of such letter of credit;

(xx) Indebtedness of any Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor; *provided, however*, that the aggregate principal amount of Indebtedness Incurred under this clause (xx), when aggregated with the principal amount of all other Indebtedness then outstanding and Incurred pursuant to this clause (xx), together with Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) hereof, does not exceed the greater of \$40 million and 0.12 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding

such date on which such additional Indebtedness is Incurred and after giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xxi) Indebtedness of the Company or any Restricted Subsidiary consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xxii) Indebtedness of the Company and the Restricted Subsidiaries in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade letters of credit (other than obligations in respect of other Indebtedness) in the ordinary course of business;

(xxiii) Indebtedness, Incurred on behalf of, or representing guarantees of Indebtedness of, joint ventures of the Company and any Restricted Subsidiary; *provided, however*, that the aggregate principal amount of Indebtedness Incurred under this clause (xxiii), when aggregated with the principal amount of all other Indebtedness then outstanding and Incurred pursuant to this clause (xxiii), together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) hereof, does not exceed the greater of \$40 million and 0.12 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such event and giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xxiv) to the extent constituting Indebtedness of the Company and the Restricted Subsidiaries, all premium (if any), defeasance costs, interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Indebtedness otherwise permitted to be incurred pursuant to this Section 4.03;

(xxv) Indebtedness in respect of Obligations of the Company or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or any Hedging Obligations;

(xxvi) Indebtedness of the Company or any Restricted Subsidiary to or on behalf of any joint venture (regardless of the form of legal entity) that is not a Restricted Subsidiary arising in the ordinary course of business in connection with the cash management operations (including with respect to intercompany self-insurance arrangements) of the Company and its Restricted Subsidiaries.

(xxvii) deposits raised by any Restricted Subsidiary that is subject to state and/or federal banking regulations that constitute Indebtedness owing to such depositor;

(xxviii) Indebtedness consisting of earn outs and obligations of the Company or any Restricted Subsidiary under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions or any Permitted Investment;

(xxix) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business; and

(xxx) Obligations in respect of Cash Management Agreements.

(c) For purposes of determining compliance with this Section 4.03:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness described in clauses (i) through (xxx) of Section 4.03(b) above or is entitled to be Incurred or issued pursuant to Section 4.03(a), then the Company may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify (as if Incurred at such later time), such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) in any manner that complies with this Section 4.03; *provided* that Indebtedness outstanding under the Credit Agreement on the Issue Date, any Old Notes outstanding on the Issue Date and the Initial Notes (but for the avoidance of doubt, not any Additional Notes) shall be incurred under clause (i) of Section 4.03(b) above and may not be reclassified;

(2) at the time of Incurrence, classification or reclassification, the Company will be entitled to divide and classify an item of Indebtedness in more than one of the categories of Indebtedness described in Section 4.03(a) or clauses (i) through (xxx) of Section 4.03(b) (or any portion thereof) without giving *pro forma* effect to the Indebtedness Incurred, classified or reclassified pursuant to any other clause or paragraph of this Section 4.03 (or any portion thereof) when calculating the amount of Indebtedness that may be Incurred, classified or reclassified pursuant to any such clause or paragraph (or any portion thereof) at such time; *provided* that, for the avoidance of doubt, it is understood and agreed that for any Indebtedness Incurred, classified or reclassified in reliance on a category of permitted Indebtedness involving the calculation of a ratio, such Indebtedness will be included in the calculation of such ratio at the time of such Incurrence, classification or reclassification; and

(3) in connection with (x) the Incurrence or issuance, as applicable, of revolving loan Indebtedness under this Section 4.03 or (y) any commitment to Incur or issue Indebtedness, Disqualified Stock or Preferred Stock under this Section 4.03, the Company or applicable Restricted Subsidiary may designate such Incurrence or issuance as having occurred on the date of first Incurrence of such revolving loan Indebtedness or commitment (such date, the “Deemed Date”), and any related subsequent actual Incurrence or issuance will be deemed for all purposes under this Indenture to have been Incurred or issued on such Deemed Date, including without limitation for purposes of calculating the Fixed Charge Coverage Ratio, usage of any baskets hereunder (if

applicable), the Total Indebtedness Leverage Ratio, the Secured Leverage Ratio, the Senior Secured Leverage Ratio and EBITDA (and all such calculations on and after the Deemed Date until the termination of such commitments shall be made on a *pro forma* basis after giving effect to the deemed Incurrence or issuance and related transactions in connection therewith).

Accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock, as applicable, amortization of original issue discount, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.03. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 4.03.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower U.S. dollar equivalent), in the case of revolving credit debt. However, if the Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and the refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of the refinancing, the U.S. dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of the refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

Notwithstanding any other provision of this Section 4.03, the maximum amount of Indebtedness that the Company and its Restricted Subsidiaries may Incur pursuant to this Section 4.03 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which the respective Indebtedness is denominated that is in effect on the date of the refinancing.

#### Section 4.04 Limitation on Restricted Payments.

(a) The Company shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any distribution on account of any of the Company's or any of the Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Company (other than (A) dividends or distributions payable solely in

Equity Interests (other than Disqualified Stock) of the Company; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary, the Company or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase or otherwise acquire or retire for value any Equity Interests of the Company or any direct or indirect parent of the Company;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Subordinated Indebtedness of an Issuer or any Subsidiary Guarantor (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (B) Indebtedness permitted under clauses (vii) and (ix) of Section 4.03(b)); or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "Restricted Payments"), unless, at the time of such Restricted Payment:

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Company could Incur \$1.00 of additional Indebtedness under Section 4.03(a); and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and the Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (vi)(B), (viii) and (xiii)(B) of Section 4.04(b), but excluding all other Restricted Payments permitted by Section 4.04(b)), is less than the amount equal to the Cumulative Credit.

(b) The provisions of Section 4.04(a) shall not prohibit:

(i) the payment of any dividend or distribution or the consummation of any redemption within 60 days after the date of declaration thereof, if at the date of declaration or the giving notice of such redemption, as applicable, such payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("Retired Capital Stock") or Subordinated Indebtedness of an Issuer,



any direct or indirect parent of the Company or any Subsidiary Guarantor in exchange for, or out of the proceeds of, the substantially concurrent sale of, Equity Interests of the Company or any direct or indirect parent of the Company or contributions to the equity capital of the Company (other than any Disqualified Stock or any Equity Interests sold to a Subsidiary of the Company) (collectively, including any such contributions, “Refunding Capital Stock”),

(A) the declaration and payment of dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of Refunding Capital Stock, and

(B) if immediately prior to the retirement of Retired Capital Stock, the declaration and payment of dividends thereon was permitted under clause (vi) of this Section 4.04(b) and not made pursuant to clause (ii)(B), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent of the Company) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Retired Capital Stock immediately prior to such retirement;

(iii) the redemption, repurchase, defeasance, or other acquisition or retirement of Subordinated Indebtedness of an Issuer or any Subsidiary Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of an Issuer or a Subsidiary Guarantor, which is Incurred in accordance with Section 4.03 so long as:

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), *plus* any accrued and unpaid interest, of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired for value (plus the amount of any premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired, any tender premiums, *plus* any defeasance costs, fees and expenses incurred in connection therewith),

(B) such Indebtedness is subordinated to the Notes or the related Subsidiary Guarantee of such Subsidiary Guarantor, as the case may be, at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value,

(C) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the last maturity date of any Notes then outstanding, and

(D) such Indebtedness has a Weighted Average Life to Maturity at the time Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Subordinated Indebtedness being redeemed, repurchased, defeased, acquired or retired that were due on or after the date that is one year following the last maturity date of any Notes then outstanding were instead due on such date;

(iv) a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Equity Interests of the Company or any direct or indirect parent of the Company held by any future, present or former employee, director, officer or consultant of the Company or any direct or indirect parent of the Company or any Subsidiary of the Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; *provided, however*, that the aggregate Restricted Payments made under this clause (iv) do not exceed \$7.5 million in any calendar year (which shall increase to \$15 million subsequent to the consummation of an underwritten public Equity Offering of Capital Stock of the Company or any direct or indirect parent of the Company), with unused amounts in any calendar year being permitted to be carried over to succeeding calendar years subject to a maximum of \$15 million in any calendar year (which shall increase to \$80 million subsequent to the consummation of an underwritten public Equity Offering of Capital Stock); *provided, further, however*, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by the Company or any of the Restricted Subsidiaries from the sale of Equity Interests (other than Disqualified Stock) of the Company or any direct or indirect parent of the Company (to the extent contributed to the Company) to employees, directors, officers or consultants of the Company and the Restricted Subsidiaries or any direct or indirect parent of the Company that occurs after the Issue Date (*provided* that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend will not increase the amount available for Restricted Payments under clause (3) of the definition of “Cumulative Credit”), *plus*

(B) the cash proceeds of key man life insurance policies received by the Company or any direct or indirect parent of the Company (to the extent contributed to the Company) or the Restricted Subsidiaries after the Issue Date;

*provided* that the Company may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) above in any calendar year; and *provided, further*, that cancellation of Indebtedness owing to the Company or any Restricted Subsidiary from any present or former employees, directors, officers or consultants of the Company, any Restricted Subsidiary or the direct or indirect parents of the Company in connection with a repurchase of Equity Interests of the Company or any of its direct or indirect parents will not be deemed to constitute a Restricted Payment for purposes of this Section 4.04 or any other provision of this Indenture;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Company or any Restricted Subsidiary issued or incurred in accordance with Section 4.03;

(vi) (A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued after the Issue Date;

(B) a Restricted Payment to any direct or indirect parent of the Company, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of any direct or indirect parent of the Company issued after the Issue Date; *provided* that the aggregate amount of dividends declared and paid pursuant to this clause (B) does not exceed the net cash proceeds actually received by the Company from any such sale of Designated Preferred Stock (other than Disqualified Stock) issued after the Issue Date; and

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to Section 4.04(b)(ii);

*provided, however*, in the case of each of clauses (A) and (C) above of this clause (vi), that for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding the date of issuance of such Designated Preferred Stock, after giving effect to such issuance (and the payment of dividends or distributions and treating such Designated Preferred Stock as Indebtedness for borrowed money for such purpose) on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), the Company would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(vii) Investments in Unrestricted Subsidiaries having an aggregate Fair Market Value (as determined in good faith by the Company), taken together with all other Investments made pursuant to this clause (vii) that are at that time outstanding, not to exceed the sum of (a) the greater of \$45 million and 0.13 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such event and giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters and (b) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in respect of any such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided, however*, that if any Investment pursuant to this clause (vii) is made in any Person that is not the Company or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Company or a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) of the definition of "Permitted Investments" and shall

cease to have been made pursuant to this clause (vii) for so long as such Person continues to be the Company or a Restricted Subsidiary;

(viii) any Restricted Payments made as a dividend to Holdings to be used by Holdings or any direct or indirect parent of Holdings to make dividends to its equity holders in an aggregate amount not to exceed \$25 million per annum;

(ix) Restricted Payments that are made with (or in an aggregate amount that does not exceed the aggregate amount of) Excluded Contributions;

(x) other Restricted Payments in an aggregate amount, when taken together with all other Restricted Payments made pursuant to this clause (x) that are at that time outstanding, not to exceed the greater of \$50 million and 0.15 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such event and giving *pro forma* effect thereto as if such event occurred at the beginning of such four fiscal quarters;

(xi) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Company or a Restricted Subsidiary by, Unrestricted Subsidiaries;

(xii) (A) with respect to any taxable period for which the Company (or if the Company is a partnership or disregarded entity for U.S. federal income tax purposes that is wholly owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state, local or foreign income tax purposes, such C corporation) and/or any of its Subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable state, local or foreign income tax purposes of which a direct or indirect parent of the Company is the common parent, distributions to any such direct or indirect parent of the Company to fund income Taxes for which such parent is liable, in an amount not to exceed the amount of any U.S. federal, state and/or local income taxes that the Company and/or its Subsidiaries, as applicable, would have paid for such taxable period (taking into account prior year losses) had the Company and/or its Subsidiaries, as applicable, been a stand-alone corporate taxpayer or a stand-alone corporate group, and (B) with respect to any taxable period ending after the Issue Date for which the Company is a partnership or disregarded entity for U.S. federal income tax purposes (other than a partnership or disregarded entity described in clause (A)), distributions to any direct or indirect parent of the Company in an amount necessary to permit such direct or indirect parent of the Company to make a pro rata distribution to its owners such that each direct or indirect owner of the Company receives an amount from such pro rata distribution sufficient to enable such owner to pay its U.S. federal, state and/or local income taxes (to the extent the Company is treated as a pass-through for state and/or local purposes, as applicable) attributable to its direct or indirect ownership of the Company and its Subsidiaries with respect to such taxable period (assuming that each owner is subject to tax at the highest combined marginal federal, state, local and/or foreign income tax rate applicable to an individual resident of New York, New York for such taxable period and taking into account the deductibility of

state and local income taxes for U.S. federal income tax purposes (and any limitations thereon), the alternative minimum tax, any cumulative net taxable loss of the Company for prior taxable periods ending after the Issue Date to the extent such loss is of a character that would allow such loss to be available to reduce taxes in the current taxable period (taking into account any limitations on the utilization of such loss to reduce such taxes and assuming such loss had not already been utilized) and the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income);

(xiii) any Restricted Payment, if applicable:

(A) in amounts required for any direct or indirect parent of the Company to pay fees and expenses (including franchise or similar taxes) required to maintain its corporate existence, customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of any direct or indirect parent of the Company and general corporate operating and overhead expenses of any direct or indirect parent of the Company in each case to the extent such fees and expenses are attributable to the ownership or operation of the Company, if applicable, and its Subsidiaries;

(B) in amounts required for any direct or indirect parent of the Company, if applicable, to pay interest and/or principal on Indebtedness the proceeds of which have been contributed to the Company or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Company Incurred in accordance with Section 4.03; and

(C) in amounts required for any direct or indirect parent of the Company to pay fees and expenses related to any equity or debt offering of such parent (whether or not successful);

(xiv) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(xv) any consideration, payment, dividend, distribution or other transfer in connection with a Permitted Securitization Financing;

(xvi) Restricted Payments by the Company or any Restricted Subsidiary to allow the payments of cash, or dividends, distributions or advances to allow such Person to make payments of cash, in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Interests of any such Person;

(xvii) the repurchase, redemption or other acquisition or retirement for value of any Preferred Stock or any Subordinated Indebtedness pursuant to the provisions similar to those described in Sections 4.06 and 4.08; *provided* that all Notes tendered by holders of the Notes in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(xviii) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Company and the Restricted Subsidiaries, taken as a whole, that complies with Section 5.01; *provided* that as a result of such consolidation, amalgamation, merger or transfer of assets, the Issuers shall have made a Change of Control Offer (if required by this Indenture) and that all Notes tendered by holders in connection with such Change of Control Offer have been repurchased, redeemed or acquired for value;

(xix) any Restricted Payment used to fund the Transactions and the payment of fees and expenses Incurred in connection with the Transactions or owed by the Company or any direct or indirect parent of the Company or Restricted Subsidiaries of the Company to Affiliates, and any other payments made, including any such payments made to any direct or indirect parent of the Company to enable it to make payments in connection with the consummation of the Transactions, whether payable on the Issue Date or thereafter, in each case to the extent permitted by Section 4.07;

(xx) [reserved];

(xxi) other Restricted Payments so long as, immediately after giving effect to such Restricted Payment, the Total Indebtedness Leverage Ratio for the most recently ended four fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding such Restricted Payment is not greater than 2.47 to 1.00 on a *pro forma* basis; and

(xxii) any Person may make distributions to minority shareholders of any Subsidiary that is acquired pursuant to an acquisition or Investment permitted under this Indenture pursuant to appraisal or dissenters' rights with respect to shares of such Subsidiary held by such shareholders;

*provided, however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (vi)(B), (vii), (x), (xi), (xiii)(B) and (xxi) of this Section 4.04(b), no Default shall have occurred and be continuing or would occur as a consequence thereof; *provided, further*, that any Restricted Payments made with property other than cash shall be calculated using the Fair Market Value (as determined in good faith by the Company) of such property.

Notwithstanding the foregoing or any other term of this Indenture, the Company will not, and will not permit any of the Restricted Subsidiaries to, directly or indirectly, invest, transfer, sell or otherwise convey any intellectual property rights or intellectual property to any Unrestricted Subsidiary.

Notwithstanding anything to the contrary in this Indenture, the Issuers shall not, and no Restricted Subsidiary or any other Subsidiary shall make or provide for any repayment, purchase, defeasance, redemption, acquisition, exchange, prepayment, or otherwise retire or effectuate a refinancing with respect to principal obligations (other than customary amortization payments) under the Credit Agreement or the Old Notes (in each case, including any

indebtedness issued, or the proceeds of which are used, to purchase, defease, redeem, acquire, prepay, retire, refinance, repay, replace, or in exchange for these instruments, or any such successor indebtedness, and in each case regardless of whether designated as a "Credit Agreement" or "Other First Priority Obligations," but only to the extent such Indebtedness (w) has a stated maturity date, (x) provides for the repayment of principal obligations thereon, (y) is mandatorily redeemable at the option of the holder or lender thereof (other than customary change of control or asset sale repayment provisions) or (z) by its terms or at the option of the holder thereof is exchangeable into a new instrument of the type described in clauses (w) – (z), in each case prior to the maturity date of the Notes), unless such repayment, purchase, defeasance, redemption, acquisition, exchange, prepayment, retirement or refinancing is made from the proceeds of (or solely as it pertains to clause (iii) below, the issuance of), without duplication, (i) cash flow from operations less cash that has been previously expended on capital expenditures, in each case since the Issue Date (excluding, for the avoidance of doubt, proceeds from sales of assets, the incurrence of indebtedness or the sales of equity interests), (ii) pursuant to Section 4.06(b)(i), (iii) Pari Passu Indebtedness or Junior Lien Obligations in each case permitted under this Indenture on the Issue Date or (iv) the sale of, Equity Interests of the Company or any direct or indirect parent of the Company, to the extent of the amount of such proceeds contributed to the Company or such Subsidiary.

(c) As of the Issue Date, all of the Subsidiaries of the Company will be Restricted Subsidiaries. The Company will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and the Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated on such date of designation will be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation will only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time and if such Subsidiary otherwise meets the definition of an "Unrestricted Subsidiary."

Section 4.05 Dividend and Other Payment Restrictions Affecting Subsidiaries. The Company shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to the Company or any Restricted Subsidiary (1) on its Capital Stock; or (2) with respect to any other interest or participation in, or measured by, its profits; or (ii) pay any Indebtedness owed to the Company or any Restricted Subsidiary;

(b) make loans or advances to the Company or any Restricted Subsidiary; or

(c) sell, lease or transfer any of its properties or assets to the Company or any Restricted Subsidiary;

*except* in each case for such encumbrances or restrictions existing under or by reason of:

(1) (A) contractual encumbrances or restrictions in effect on the Issue Date and (B) contractual encumbrances or restrictions pursuant to the Credit Agreement, the other Credit Agreement Documents, the Old Notes Documents and, in each case, any similar contractual encumbrances or restrictions or any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings of such agreements or instruments;

(2) this Indenture, the Notes, the Security Documents, the First Lien Intercreditor Agreement or the Subsidiary Guarantees;

(3) applicable law or any applicable rule, regulation or order;

(4) any agreement or other instrument of a Person acquired by the Company or any Restricted Subsidiary which was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(5) contracts or agreements for the sale of assets, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Restricted Subsidiary;

(6) Secured Indebtedness otherwise permitted to be Incurred pursuant to Section 4.03 and Section 4.12 that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(7) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(8) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(9) purchase money obligations for property acquired and Capitalized Lease Obligations in the ordinary course of business that impose restrictions of the nature discussed in Section 4.05(c) above on the property so acquired;

(10) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business or consistent with past practice or industry norm;

(11) in the case of Section 4.05(c) above, any encumbrance or restriction that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or



the assignment or transfer of any such lease, license (including without limitation, licenses of intellectual property) or other contracts;

(12) any encumbrances or restrictions of a Special Purpose Securitization Subsidiary effected in connection with a Permitted Securitization Financing; *provided, however*, that such restrictions apply only to such Special Purpose Securitization Subsidiary;

(13) other Indebtedness, Disqualified Stock or Preferred Stock (a) of the Company or any Restricted Subsidiary that is an Issuer, a Subsidiary Guarantor or a Foreign Subsidiary or (b) of any Restricted Subsidiary that is not an Issuer, a Subsidiary Guarantor or a Foreign Subsidiary so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuers' ability to make anticipated principal or interest payments on the Notes (as determined in good faith by the Company), *provided* that in the case of each of clauses (a) and (b), such Indebtedness, Disqualified Stock or Preferred Stock is permitted to be Incurred subsequent to the Issue Date pursuant to Section 4.03;

(14) any Restricted Investment not prohibited by Section 4.04 and any Permitted Investment; or

(15) any encumbrances or restrictions of the type referred to in Section 4.05(a), (b) or (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (14) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, not materially more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this Section 4.05, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Company or a Restricted Subsidiary to other Indebtedness Incurred by the Company or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

#### Section 4.06 Asset Sales.

(a) The Company shall not, and shall not permit any of the Restricted Subsidiaries to, cause or make an Asset Sale, unless (x) the Company or any Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (as determined in good faith by the Company) of the assets sold or otherwise disposed of, and (y) at least 75% of the consideration therefor received by the

Company or such Restricted Subsidiary, as the case may be, is in the form of Cash Equivalents; *provided* that the amount of:

(i) any liabilities (as shown on the Company's or a Restricted Subsidiary's most recent balance sheet or in the notes thereto) of the Company or a Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Notes or any Subsidiary Guarantee) that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee,

(ii) any notes or other obligations or other securities or assets received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash within 180 days of the receipt thereof (to the extent of the cash received),

(iii) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Sale, to the extent that the Company and each other Restricted Subsidiary are released from any guarantee of payment of such Indebtedness in connection with the Asset Sale,

(iv) consideration consisting of Indebtedness of the Company or any Restricted Subsidiary (other than Subordinated Indebtedness) received after the Issue Date from Persons who are not the Company or any Restricted Subsidiary, and

(v) any Designated Non-cash Consideration received by the Company or any Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value (as determined in good faith by the Company), taken together with all other Designated Non-cash Consideration received pursuant to this Section 4.06(a)(v) that is at that time outstanding, not to exceed the greater of \$65 million and 0.19 multiplied by the Pro Forma EBITDA of the Company for the most recently ended four full fiscal quarters for which financial statements have been delivered to the Trustee immediately preceding the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value),

shall in each case be deemed to be Cash Equivalents for the purposes of this Section 4.06(a).

(b) Within 365 days after the Company's or any Restricted Subsidiary's receipt of the Net Proceeds of any Asset Sale, the Company or such Restricted Subsidiary may apply the Net Proceeds from such Asset Sale, at its option:

(i) to repay (A) Indebtedness constituting First-Priority Obligations (and, if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto), (B) Obligations under the Notes or (C) other Pari Passu Indebtedness other than First-Priority Obligations so long as the Net Proceeds are with respect to assets not constituting Collateral (*provided* that if an Issuer or any Subsidiary Guarantor shall so reduce other First-Priority Obligations pursuant to clause (A) or Pari Passu Indebtedness that does not constitute First-Priority Obligations under

this clause (C) (which, for the avoidance of doubt, does not include Indebtedness described in clauses (A) and (B) even if such Indebtedness may also constitute Pari Passu Indebtedness) in an amount in excess of \$75.0 million in the aggregate since the Issue Date (whether from Net Proceeds from Asset Sales or from proceeds from dispositions or otherwise), the Issuers will equally and ratably reduce Notes Obligations pursuant to Section 3.01, through open-market purchases (*provided* that such purchases are at or above 100% of the principal amount thereof or, in the event that the Notes were issued with significant original issue discount, 100% of the accreted value thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all holders to purchase a pro rata principal amount of Notes at a purchase price equal to 100% of the principal amount thereof (or, in the event that the Notes were issued with significant original issue discount, 100% of the accreted value thereof), *plus* accrued and unpaid interest, if any), in each case other than Indebtedness owed to the Company or an Affiliate of the Company; or

(ii) to make an investment in any one or more businesses (*provided* that if such investment is in the form of the acquisition of Capital Stock of a Person, such acquisition results in such Person becoming a Restricted Subsidiary of the Company or in an increase in the percentage ownership by the Company (or a Restricted Subsidiary) in such Restricted Subsidiary), assets, or property or capital expenditures, in each case (A) used or useful in a Similar Business or (B) that replace the properties and assets that are the subject of such Asset Sale or, in each case, to reimburse the cost of any of the foregoing incurred on or after the date on which the Asset Sale giving rise to such Net Proceeds was contractually committed.

In the case of Section 4.06(b)(ii), a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment until the 18-month anniversary of the date of the receipt of such Net Proceeds; *provided* that in the event such binding commitment is later canceled or terminated for any reason after the 365<sup>th</sup> day after the receipt of such Net Proceeds but before such Net Proceeds are so applied, then such Net Proceeds shall constitute Excess Proceeds unless the Company or such Restricted Subsidiary enters into another binding commitment (a "Second Commitment") within six months of such cancellation or termination of the prior binding commitment; *provided, further*, that the Company or such Restricted Subsidiary may only enter into a Second Commitment under the foregoing provision one time with respect to each Asset Sale and to the extent such Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied or are not applied within 180 days of such Second Commitment, then such Net Proceeds shall constitute Excess Proceeds.

Pending the final application of any such Net Proceeds, the Company or such Restricted Subsidiary may temporarily reduce Indebtedness under a revolving credit facility, if any, or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture. Any Net Proceeds from any Asset Sale that are not applied as provided and within the time period set forth in the first paragraph of this Section 4.06(b) (it being understood that any portion of such Net Proceeds used to make an offer to purchase Notes, as described in clause (i) of this Section 4.06(b), shall be deemed to have been so applied whether or not such offer is accepted) will be deemed to constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds

exceeds \$75 million, the Issuers shall make an offer to all holders of Notes (and, at the option of the Issuers, to holders of any other First-Priority Obligations or, unless the Asset Sale is with respect to Collateral, other Pari Passu Indebtedness) (an “Asset Sale Offer”) to purchase the maximum principal amount of Notes (and such First-Priority Obligations or other Pari Passu Indebtedness), that is at least \$2,000 and an integral multiple of \$1,000 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof (or, in the event the Notes or such First-Priority Obligations or other Pari Passu Indebtedness were issued with significant original issue discount, 100% of the accreted value thereof), *plus* accrued and unpaid interest, if any (or, in respect of such First-Priority Obligations or other Pari Passu Indebtedness, such lesser price, if any, as may be provided for by the terms of such First-Priority Obligations or other Pari Passu Indebtedness), to, but excluding, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Section 4.06. The Issuers will commence an Asset Sale Offer with respect to Excess Proceeds within ten (10) Business Days after the date that aggregate amount of Excess Proceeds exceeds \$75 million by mailing, or delivering electronically if held by the Depository, the notice required pursuant to the terms of this Indenture, with a copy to the Trustee. To the extent that the aggregate amount of Notes (and such First-Priority Obligations or other Pari Passu Indebtedness) tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuers may use any remaining Excess Proceeds for any purpose that is not prohibited by this Indenture. If the aggregate principal amount of Notes (and such First-Priority Obligations or other Pari Passu Indebtedness) surrendered by holders thereof exceeds the amount of Excess Proceeds, the Issuers shall select the Notes to be purchased in the manner described in Section 4.06(e). Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

(c) The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations described in this Indenture by virtue thereof.

(d) Not later than the date upon which written notice of an Asset Sale Offer is delivered to the Trustee as provided above, the Issuers shall deliver to the Trustee an Officer’s Certificate as to (i) the amount of the Excess Proceeds, (ii) the allocation of the Net Proceeds from the Asset Sales pursuant to which such Asset Sale Offer is being made and (iii) the compliance of such allocation with the provisions of Section 4.06(b). On the Asset Sale Offer purchase date, the Issuers shall irrevocably deposit with the Trustee or with the applicable Paying Agent (or, if the Company or a Subsidiary is acting as the Paying Agent, segregate and hold in trust) an amount equal to the Asset Sale Offer purchase price to be paid in accordance with the provisions of this Section 4.06. Upon the expiration of the period for which the Asset Sale Offer remains open (the “Offer Period”), the Issuers shall deliver to the Trustee for cancellation the Notes or portions thereof that have been properly tendered to and are to be accepted by the Issuers. The Trustee (or the applicable Paying Agent, if not the Trustee) shall, on the date of purchase, mail or deliver payment to each tendering holder in the amount of the purchase price. In the event that the Asset Sale Offer purchase price delivered by the Issuers to

the Trustee are greater than the purchase price of the Notes tendered, the Trustee shall deliver the excess to the Issuers immediately after the expiration of the Offer Period for application in accordance with this Section 4.06.

(e) Holders electing to have a Note purchased shall be required to surrender such Note, with an appropriate form duly completed, to the Issuers at the address specified in the notice at least three Business Days prior to the purchase date. Holders shall be entitled to withdraw their election if the Trustee or the Issuers receive not later than one Business Day prior to the purchase date, a facsimile transmission or letter setting forth the name of the holder, the principal amount of the Note which was delivered by the holder for purchase and a statement that such holder is withdrawing his election to have such Note purchased. If at the end of the Offer Period more Notes (and such First-Priority Obligations or other Pari Passu Indebtedness) are tendered pursuant to an Asset Sale Offer than the Issuers are required to purchase, selection of such Notes for purchase shall be made by the Issuers in compliance with the requirements of the principal national securities exchange, if any, on which such Notes are listed (and the Issuers shall notify the Trustee in writing of any such listing), or if such Notes are not so listed, on a pro rata basis to the extent practicable, by lot or by such other method as the Issuers deem appropriate (and in such manner as complies with the requirements of the Depository, if applicable); *provided* that no Notes of \$2,000 or less shall be purchased in part. Selection of such First-Priority Obligations or other Pari Passu Indebtedness shall be made pursuant to the terms of such First-Priority Obligations or other Pari Passu Indebtedness.

(f) Notices of an Asset Sale Offer shall be mailed by the Issuers by first class mail, postage prepaid, or delivered electronically if held by the Depository, at least 30 but not more than 60 days before the purchase date to each holder of Notes at such holder's registered address, with a copy to the Trustee. If any Note is to be purchased in part only, any notice of purchase that relates to such Note shall state the portion of the principal amount thereof that has been or is to be purchased.

#### Section 4.07 Transactions with Affiliates.

(a) The Company shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of \$10 million, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Company or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50 million, the Company delivers to the Trustee a resolution adopted in good faith by the majority of the

Board of Directors of the Company, approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 4.07(a) shall not apply to the following:

(i) transactions between or among the Company and/or any of the Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction) and any merger, consolidation or amalgamation of the Company and any direct parent of the Company; *provided* that such parent shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of the Company and such merger, consolidation or amalgamation is otherwise in compliance with the terms of this Indenture and effected for a bona fide business purpose;

(ii) Restricted Payments permitted by Section 4.04 and Permitted Investments;

(iii) the payment of reasonable and customary fees and reimbursement of expenses paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Company, any Restricted Subsidiary, or any direct or indirect parent of the Company;

(iv) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (i) of Section 4.07(a);

(v) payments or loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by a majority of the Board of Directors of the Company in good faith;

(vi) any agreement as in effect as of the Issue Date or any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the holders of the Notes in any material respect than the original agreement as in effect on the Issue Date, as determined in good faith by the Company) or any transaction contemplated thereby;

(vii) the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under the terms of, any stockholders or other agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date, and any transaction, agreement or arrangement described in the Offering Memorandum and, in each case, any amendment thereto or similar transactions, agreements or arrangements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under, any future amendment to any such existing transaction, agreement or arrangement or under any similar transaction, agreement or arrangement entered into after the Issue Date shall only be permitted by this

clause (vii) to the extent that the terms of any such existing transaction, agreement or arrangement together with all amendments thereto, taken as a whole, or new transaction, agreement or arrangement are not otherwise more disadvantageous to the holders of the Notes in any material respect than the original transaction, agreement or arrangement as in effect on the Issue Date, as determined in good faith by the Issuer;

(viii) the execution of the Transactions, and the payment of all fees, expenses, bonuses and awards related to the Transactions, including fees to any Investor or Investor Affiliate;

(ix) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, which are fair to the Company and the Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Company or (B) transactions with joint ventures or Unrestricted Subsidiaries entered into in the ordinary course of business or consistent with past practice;

(x) transactions pursuant to any Permitted Securitization Financing;

(xi) the issuance of Equity Interests (other than Disqualified Stock) of the Company to any Person;

(xii) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Company or any direct or indirect parent of the Company or of a Restricted Subsidiary, as appropriate, in good faith;

(xiii) the entering into of any tax sharing agreement or arrangement that complies with Section 4.04(b)(xii) and the performance under any such agreement or arrangement;

(xiv) any contribution to the capital of the Company;

(xv) transactions permitted by, and complying with, Section 5.01;

(xvi) transactions between the Company or any Restricted Subsidiary and any Person that would constitute an Affiliate Transaction solely because a director of such other Person is also a director of the Company or any direct or indirect parent of the Company; *provided, however*, that such director abstains from voting as a director of the Company or such direct or indirect parent, as the case may be, on any matter involving such other Person;

(xvii) pledges of Equity Interests of Unrestricted Subsidiaries;

(xviii) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(xix) [reserved];

(xx) provided no Default or Event of Default shall have occurred and be continuing or would result therefrom, payments by the Company or any of its Restricted Subsidiaries to any of the Investors or any Investor Affiliate made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by a majority of the Board of Directors of the Company in good faith;

(xxi) intercompany transactions for the purpose of improving the consolidated tax efficiency of the Company and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Indenture;

(xxii) investments by any Investor or Investor Affiliate in securities of the Company or any Restricted Subsidiary so long as (i) the investment is being generally offered to other investors on the same or more favorable terms and (ii) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities; and

(xxiii) any agreements or arrangements between a third party and an Affiliate of the Company that are acquired or assumed by the Company or any Restricted Subsidiary in connection with an acquisition or merger of such third party (or assets of such third party) by or with the Company or any Restricted Subsidiary; provided that (A) such acquisition or merger is permitted under this Indenture and (B) such agreements or arrangements are undertaken in good faith and not entered into in contemplation of such acquisition or merger or otherwise for the purpose of avoiding the restrictions imposed by this Section 4.07.

#### Section 4.08 Change of Control.

(a) Upon the occurrence of a Change of Control, each holder shall have the right to require the Issuers to repurchase all or any part of such holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof, *plus* accrued and unpaid interest, if any, to, but excluding, the date of repurchase (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date), in accordance with the terms contemplated in this Section 4.08; *provided, however*, that notwithstanding the occurrence of a Change of Control, the Company shall not be obligated to purchase any Notes pursuant to this Section 4.07(b)(xxii) in the event that it has previously or concurrently elected to redeem such Notes in accordance with Article III. In the event that at the time of such Change of Control, the terms of the Bank Indebtedness restrict or prohibit the repurchase of Notes pursuant to this Section 4.07(b)(xxii), then prior to the mailing (or other delivery) of the notice to holders provided for in Section 4.08(b) but in any event within 30 days following any Change of Control,



the Issuers shall: (i) repay in full all Bank Indebtedness or, if doing so will allow the purchase of Notes, offer to repay in full all Bank Indebtedness and repay the Bank Indebtedness of each lender and/or noteholder who has accepted such offer; or (ii) obtain the requisite consent under the agreements governing the Bank Indebtedness to permit the repurchase of the Notes as provided for in Section 4.08(b).

(b) Within 30 days following any Change of Control, except to the extent that the Issuers have exercised their right to redeem the Notes in accordance with Article III, the Issuers shall mail to each holder's registered address, or deliver electronically if held by the Depository, with a copy to the Trustee a notice (a "Change of Control Offer") stating:

(i) that a Change of Control has occurred and that such holder has the right to require the Issuers to repurchase such holder's Notes at a repurchase price in cash equal to 101% of the principal amount thereof, *plus* accrued and unpaid interest, if any, to, but excluding, the date of repurchase (subject to the right of the holders of record on the relevant Record Date to receive interest on the relevant Interest Payment Date);

(ii) the circumstances and relevant facts and financial information regarding such Change of Control;

(iii) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed or delivered electronically); and

(iv) the instructions determined by the Issuers, consistent with this Section 4.08, that a holder must follow in order to have its Notes purchased.

(c) Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Issuers at the address specified in the notice at least three Business Days prior to the purchase date. The holders shall be entitled to withdraw their election if the Trustee or the Issuers receive not later than one Business Day prior to the purchase date a facsimile transmission or letter setting forth the name of the holder, the principal amount of the Note which was delivered for purchase by the holder and a statement that such holder is withdrawing his election to have such Note purchased. Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(d) On the purchase date, all Notes purchased by the Issuers under this Section 4.08 shall be delivered to the Trustee for cancellation, and the Issuers shall pay the purchase price *plus* accrued and unpaid interest, if any, to the holders entitled thereto.

(e) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Notwithstanding the provisions of this Section 4.08, the Issuers shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the

Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(g) Notes repurchased by the Issuers pursuant to a Change of Control Offer will have the status of Notes issued but not outstanding or will be retired and canceled at the option of the Issuers. Notes purchased by a third party pursuant to the preceding clause (f) will have the status of Notes issued and outstanding.

(h) At the time the Issuers deliver Notes to the Trustee which are to be accepted for purchase, the Issuers shall also deliver an Officer's Certificate stating that such Notes are to be accepted by the Issuers pursuant to and in accordance with the terms of this Section 4.08. A Note shall be deemed to have been accepted for purchase at the time the Trustee, directly or through an agent, mails or delivers payment therefor to the surrendering holder.

(i) Prior to any Change of Control Offer, the Issuers shall deliver to the Trustee an Officer's Certificate stating that all conditions precedent contained herein to the right of the Issuers to make such offer have been complied with.

(j) The Issuers shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section 4.08. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.08, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.08 by virtue thereof.

(k) If holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Issuers, or any third party making a Change of Control Offer in lieu of the Company as described above, purchase all of the Notes validly tendered and not withdrawn by such holders, the Issuers or such third party will have the right, upon not less than 30 nor more than 60 days' prior written notice to the holders (with a copy to the Trustee), given not more than 30 days following such purchase pursuant to the Change of Control Offer, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest to, but excluding, the date of redemption. Any such redemption shall be effected pursuant to Article III.

Section 4.09 Compliance Certificate. The Issuers shall deliver to the Trustee within 120 days after the end of each fiscal year of the Issuer, beginning with the fiscal year ending in December 2021, an Officer's Certificate stating that in the course of the performance by the signers of their duties as Officers of the Issuers they would normally have knowledge of any Default and whether or not the signers know of any Default that occurred during such period. If any Officer of the Issuers does, the certificate shall describe the Default, its status and what action the Issuers are taking or propose to take with respect thereto. The Issuers also shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any event which would constitute certain Defaults, their status and what action the Issuers are taking or propose to take in respect thereof. Except with respect to receipt of payments of principal and interest on the Notes and any Default or Event of Default information contained in the Officer's Certificate

delivered to it pursuant to this Section 4.09, the Trustee shall have no duty to review, ascertain or confirm the Issuers' compliance with or the breach of any representation, warranty or covenant made in this Indenture.

Section 4.10 Further Instruments and Acts. Upon request of the Trustee, the Issuers shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 4.11 Future Subsidiary Guarantors. The Company shall cause each Wholly Owned Restricted Subsidiary that is not an Excluded Subsidiary to execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit C hereto pursuant to which such Restricted Subsidiary will guarantee the Issuers' Obligations under the Notes, this Indenture and joinders to or new Security Documents and take all actions required by the Security Documents to perfect the Liens created thereunder and, if required by the First Lien Intercreditor Agreement, execute and deliver a joinder to the First Lien Intercreditor Agreement.

Section 4.12 Liens.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur or suffer to exist any Lien (except Permitted Liens) on any asset or property of the Company or such Restricted Subsidiary securing Indebtedness of the Company or a Restricted Subsidiary.

(b) For purposes of determining compliance with this Section 4.12, (i) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category of permitted Liens (or any portion thereof) described in the definition of "Permitted Liens" or pursuant to Section 4.12(a) but may be permitted in part under any combination thereof and (ii) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of permitted Liens (or any portion thereof) described in the definition of "Permitted Liens" or pursuant to Section 4.12(a), the Company may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify (as if Incurred at such later time), such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant and will be entitled to only include the amount and type of such Lien or such item of Indebtedness secured by such Lien (or any portion thereof) in one of the categories of permitted Liens (or any portion thereof) described in the definition of "Permitted Liens" or pursuant to Section 4.12(a) and, in such event, such Lien securing such item of Indebtedness (or any portion thereof) will be treated as being Incurred or existing pursuant to only such clause or clauses (or any portion thereof) or pursuant to Section 4.12(a) without giving *pro forma* effect to such item (or portion thereof) when calculating the amount of Liens or Indebtedness that may be Incurred pursuant to any other clause or paragraph (or portion thereof) at such time. In addition, with respect to any revolving loan Indebtedness or commitment to incur Indebtedness that is designated to be Incurred on any Deemed Date pursuant to Section 4.03(c)(3), any Lien that does or that shall secure such Indebtedness may also be designated by the Company or any Restricted Subsidiary to be Incurred on such Deemed Date and, in such event, any related subsequent actual Incurrence of such Lien shall be deemed for all purposes under this Indenture to be Incurred on such prior date, including for purposes of calculating usage of any "Permitted Lien" (and any calculations on and after the Deemed Date until the

termination of such commitments shall be made on a *pro forma* basis after giving effect to the deemed Incurrence or issuance and related transactions in connection therewith).

(c) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “Increased Amount” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of the Company, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (3) of the definition of “Indebtedness.”

Section 4.13 After-Acquired Property. Upon the acquisition by an Issuer or any Subsidiary Guarantor of any After-Acquired Property, or upon any additional Restricted Subsidiary becoming a Subsidiary Guarantor, such Issuer or such Subsidiary Guarantor shall execute and deliver such mortgages, deeds of trust, security instruments, financing statements and other Security Documents as shall be reasonably necessary to vest in the First-Priority Collateral Agent a perfected first-priority security interest, subject only to Permitted Liens and Liens permitted under Section 4.12, in such After-Acquired Property and to have such After-Acquired Property (but subject to the limitations as described in Article XI, the Security Documents and the First Lien Intercreditor Agreement) added to the Collateral (or in the case of a Subsidiary Guarantor, all of its assets that constitute After-Acquired Property), and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect.

Section 4.14 Maintenance of Office or Agency.

(a) The Issuers shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee or Registrar) where Notes may be surrendered for registration of transfer or for exchange. The Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made at the Corporate Trust Office of the Trustee as set forth in Section 13.02.

(b) The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency for such purposes. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Issuers hereby designate the Corporate Trust Office of the Trustee or its agent as such office or agency of the Issuers in accordance with Section 2.04.

Section 4.15 Covenant Suspension. If on any date following the Issue Date, (i) the Notes have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has occurred and is continuing under this Indenture, then, beginning on that day (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a “Covenant Suspension Event”), and subject to the provisions of the following paragraph, the Company and the Restricted Subsidiaries shall not be subject to Sections 4.03, 4.04, 4.05, 4.06, 4.07, 4.11 and 5.01(a)(iv) (collectively the “Suspended Covenants”).

In the event that the Company and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of the foregoing, and on any subsequent date (the “Reversion Date”) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then the Company and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events.

The Issuers shall provide the Trustee with written notice of each Covenant Suspension Event or Reversion Date within five Business Days of the occurrence thereof. The Trustee shall have no duty to monitor or provide notice to the holders of the Notes of any such Covenant Suspension Event or Reversion Date.

On each Reversion Date, all Indebtedness Incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified as having been Incurred or issued pursuant to Sections 4.03(a) or (b) (to the extent such Indebtedness or Disqualified Stock or Preferred Stock would be permitted to be Incurred or issued thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred or issued prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness or Disqualified Stock or Preferred Stock would not be so permitted to be Incurred or issued pursuant to Sections 4.03(a) or (b), such Indebtedness or Disqualified Stock or Preferred Stock will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under Section 4.03(b)(iii). Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 4.04 will be made as though Section 4.04 had been in effect since the Issue Date and prior to, but not during, the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will not reduce the amount available to be made as Restricted Payments under Section 4.04(a). As described above, however, no Default or Event of Default will be deemed to have occurred on the Reversion Date as a result of any actions taken by the Company or its Restricted Subsidiaries during the Suspension Period.

Within 30 days of such Reversion Date, the Issuers must comply with the terms of Section 4.11.

For purposes of Section 4.06, on the Reversion Date, the unutilized Excess Proceeds amount will be reset to zero.

SUCCESSOR COMPANY

Section 5.01 When Issuers and Subsidiary Guarantors May Merge or Transfer Assets.

(a) The Company may not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person unless:

(i) the Company is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership or limited liability company or similar entity organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (the Company or such Person, as the case may be, being herein called the "Successor Company"); *provided* that in the event that the Successor Company is not a corporation, a co-obligor of the Notes is a corporation;

(ii) the Successor Company (if other than the Issuer) expressly assumes all the obligations of the Company under this Indenture and the Security Documents pursuant to supplemental indentures or other applicable documents or instruments;

(iii) immediately after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any Restricted Subsidiary as a result of such transaction as having been Incurred by the Successor Company or such Issuer or such Restricted Subsidiary at the time of such transaction) no Default shall have occurred and be continuing;

(iv) immediately after giving *pro forma* effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period (and treating any Indebtedness which becomes an obligation of the Successor Company or any Restricted Subsidiary as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), either

(1) the Successor Company would be permitted to Incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.03(a); or

(2) the Fixed Charge Coverage Ratio for the Successor Company and its Restricted Subsidiaries would be no less than such ratio for the Company and its Restricted Subsidiaries immediately prior to such transaction;

(v) if the Company is not the Successor Company, each Subsidiary Guarantor, unless it is the other party to the transactions described above, shall have by

supplemental indenture confirmed that its Subsidiary Guarantee shall apply to such Person's obligations under this Indenture and the Notes; and

(vi) the Successor Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation or transfer and such supplemental indentures (if any) comply with this Indenture.

The Successor Company (if other than the Issuer) will succeed to, and be substituted for, the Company under this Indenture, the Notes and the Security Documents, and in such event the Company will automatically be released and discharged from its obligations under this Indenture, the Notes and the Security Documents. Notwithstanding the foregoing clauses (iii) and (iv) of this Section 5.01(a), (A) the Company or any Restricted Subsidiary may merge, consolidate or amalgamate with or transfer all or part of its properties and assets to a Restricted Subsidiary and (B) the Company may merge, consolidate or amalgamate with an Affiliate incorporated solely for the purpose of reincorporating or reorganizing the Company in another state of the United States, the District of Columbia or any territory of the United States (collectively, "Permitted Jurisdiction") or may convert into a corporation, partnership or limited liability company, so long as the amount of Indebtedness of the Company and the Restricted Subsidiaries is not increased thereby. This Section 5.01(a) will not apply to a sale, assignment, transfer, conveyance or other disposition of assets between or among the Company and the Restricted Subsidiaries.

(b) The Co-Issuer may not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Co-Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person unless:

(i) the Co-Issuer is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than the Co-Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (the Co-Issuer or such Person, as the case may be, being herein called the "Successor Co-Issuer") and the Successor Co-Issuer (if other than the Co-Issuer) expressly assumes all of the obligations of the Co-Issuer under this Indenture and the Security Documents and the Notes pursuant to a supplemental indenture or other documents or instruments; or

(ii) after giving effect thereto, at least one obligor of the Notes shall be a corporation organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof.

The Successor Co-Issuer (if other than the Co-Issuer) will succeed to, and be substituted for, the Co-Issuer under this Indenture, the Notes and the Security Documents, and in such event the Co-Issuer will automatically be released and discharged from its obligations under this Indenture, the Notes and the Security Documents. This Section 5.01(b) will not apply to a

sale, assignment, transfer, conveyance or other disposition of assets between or among the Co-Issuer and the Restricted Subsidiaries.

(c) Subject to the provisions of Section 11.04 and Section 12.02(b), no Subsidiary Guarantor shall, and the Company shall not permit any Subsidiary Guarantor to, consolidate, amalgamate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) either (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a company, corporation, partnership or limited liability company or similar entity organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Subsidiary Guarantor or such Person, as the case may be, being herein called the “Successor Subsidiary Guarantor”) and the Successor Subsidiary Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under this Indenture, the Notes, the Security Documents and the Subsidiary Guarantee, as applicable, pursuant to a supplemental indenture or other applicable documents or instruments, or (B) such sale or disposition or consolidation, amalgamation or merger is not in violation of Section 4.06; and

(ii) the Successor Subsidiary Guarantor (if other than such Subsidiary Guarantor) shall have delivered or caused to be delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indenture (if any) comply with this Indenture.

Except as otherwise provided in this Indenture, the Successor Subsidiary Guarantor (if other than such Subsidiary Guarantor) will succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture, the Notes, the Security Documents and the Subsidiary Guarantee, as applicable, and such Subsidiary Guarantor will automatically be released and discharged from its obligations under this Indenture, the Notes, the Security Documents and its Subsidiary Guarantee. Notwithstanding the foregoing, (1) a Subsidiary Guarantor may merge, amalgamate or consolidate with an Affiliate incorporated solely for the purpose of reincorporating or reorganizing such Subsidiary Guarantor in a Permitted Jurisdiction or may convert into a limited liability company, corporation, partnership or similar entity organized or existing under the laws of any Permitted Jurisdiction so long as the amount of Indebtedness of such Subsidiary Guarantor is not increased thereby and (2) a Subsidiary Guarantor may merge, amalgamate or consolidate with an Issuer or any Subsidiary Guarantor.

In addition, notwithstanding the foregoing, a Subsidiary Guarantor may consolidate, amalgamate or merge with or into or wind up into, liquidate, dissolve, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets (collectively, a “Transfer”) to the Company or any Restricted Subsidiary.



DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

An "Event of Default" occurs with respect to Notes if:

- (a) there is a default in any payment of interest on any Note when due and payable, and such default continues for a period of 30 days;
- (b) there is a default in the payment of principal or premium, if any, of any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
- (c) there is a failure by the Issuers for 120 days after receipt of written notice given by the Trustee or the holders of not less than 30% in aggregate principal amount of the Notes then outstanding (with a copy to the Trustee) to comply with any of its obligations, covenants or agreements in Section 4.02;
- (d) there is a failure by the Company or any Restricted Subsidiary for 60 days after written notice given by the Trustee or the holders of not less than 30% in aggregate principal amount of the Notes then outstanding (with a copy to the Trustee) to comply with its other obligations, covenants or agreements (other than a default referred to in clauses (a), (b) and (c) above) contained in the Notes or this Indenture;
- (e) there is a failure by the Company or any Significant Subsidiary (other than any Special Purpose Securitization Subsidiary) (or any group of Subsidiaries that together would constitute a Significant Subsidiary, other than any Special Purpose Securitization Subsidiary) to pay any Indebtedness (other than Indebtedness owing to the Company or a Restricted Subsidiary or any Permitted Securitization Financing) within any applicable grace period after final maturity or the acceleration of any such Indebtedness by the holders thereof because of a default, in each case, if the total amount of such Indebtedness unpaid or accelerated exceeds \$75 million or its foreign currency equivalent;
- (f) the Company or any Significant Subsidiary (other than any Special Purpose Securitization Subsidiary) (or any group of Subsidiaries that together would constitute a Significant Subsidiary, other than any Special Purpose Securitization Subsidiary) pursuant to or within the meaning of any Bankruptcy Law:
  - (i) commences a voluntary case;
  - (ii) consents to the entry of an order for relief against it in an involuntary case;
  - (iii) consents to the appointment of a Custodian of it or for any substantial part of its property; or

(iv) makes a general assignment for the benefit of its creditors or takes any comparable action under any foreign laws relating to insolvency;

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

(i) is for relief against the Company or any Significant Subsidiary (other than any Special Purpose Securitization Subsidiary) (or any group of Subsidiaries that together would constitute a Significant Subsidiary, other than any Special Purpose Securitization Subsidiary) in an involuntary case;

(ii) appoints a Custodian of the Company or any Significant Subsidiary (other than any Special Purpose Securitization Subsidiary) (or any group of Subsidiaries that together would constitute a Significant Subsidiary, other than any Special Purpose Securitization Subsidiary) or for any substantial part of its property; or

(iii) orders the winding up or liquidation of the Company or any Significant Subsidiary (other than any Special Purpose Securitization Subsidiary) (or any group of Subsidiaries that together would constitute a Significant Subsidiary, other than any Special Purpose Securitization Subsidiary);

or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 60 days;

(h) there is a failure by the Company or any Significant Subsidiary (other than any Special Purpose Securitization Subsidiary) (or any group of Subsidiaries that together would constitute a Significant Subsidiary, other than any Special Purpose Securitization Subsidiary) to pay final judgments aggregating in excess of \$75 million or its foreign currency equivalent (net of any amounts which are covered by enforceable insurance policies issued by solvent carriers), which judgments are not discharged, waived or stayed for a period of 60 days;

(i) the Subsidiary Guarantee of a Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) with respect to the Notes ceases to be in full force and effect (except as contemplated by the terms thereof) or an Issuer or any Subsidiary Guarantor that qualifies as a Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) denies or disaffirms its obligations under this Indenture or any Subsidiary Guarantee with respect to the Notes (except as contemplated by the terms thereof) and such Default continues for 10 days;

(j) unless such Liens have been released in accordance with the provisions of this Indenture, the Security Documents or the First Lien Intercreditor Agreement, the Liens in favor of the holders of the Notes with respect to all or substantially all of the Collateral cease to be valid or enforceable and such Default continues for 30 days; or

(k) there is a failure by an Issuer or any Subsidiary Guarantor to comply for 60 days after notice to such Issuer or such Subsidiary Guarantor with its other agreements contained in the Security Documents except for a failure that would not be material to the holders of the Notes and would not materially affect the value of the Collateral taken as a whole.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

However, a default under clauses (c), (d) or (k) above shall not constitute an Event of Default until the Trustee notifies the Issuers or the holders of at least 30% in aggregate principal amount of outstanding Notes notify the Issuers, with a copy to the Trustee, of the default and the Issuers do not cure such default within the time specified in clauses (c), (d) or (k) hereof after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default.”

The term “Bankruptcy Law” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors. The term “Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Section 6.02 Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(f) or (g) with respect to the Issuer) occurs and is continuing, the Trustee by notice to the Issuers or the holders of at least 30% in aggregate principal amount of outstanding Notes by notice to the Issuers, with a copy to the Trustee, may declare the principal of, premium, if any, and accrued but unpaid interest on all the Notes to be due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(f) or (g) with respect to the Company occurs, the principal of, premium, if any, and interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any holders. Under certain circumstances, the holders of a majority in principal amount of outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

In the event of any Event of Default specified in Section 6.01(e), such Event of Default and all consequences thereof (excluding, however, any resulting payment default) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the holders of the Notes, if within 20 days after such Event of Default arose the Issuers deliver an Officer’s Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured, it being understood that in no event shall an acceleration of the principal amount of the Notes as described above be annulled, waived or rescinded upon the happening of any such events.

Section 6.03 Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy at law or in equity to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture or the Security Documents.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any holder in exercising any right or remedy accruing upon an Event of Default shall not impair

the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent required by law, all available remedies are cumulative.

Section 6.04 Waiver of Past Defaults. Provided the Notes are not then due and payable by reason of a declaration of acceleration, the holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee may waive an existing Default and its consequences except (a) a Default in the payment of the principal of or interest on a Note, (b) a Default arising from the failure to redeem or purchase any Note when required pursuant to the terms of this Indenture or (c) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each holder affected. When a Default is waived, it is deemed cured and the Issuers, the Trustee and the holders will be restored to their former positions and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

Section 6.05 Control by Majority. The holders of a majority in principal amount of outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, if the Trustee, being advised by counsel, determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or expense for which it is not adequately indemnified, or subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such holders) or that would involve the Trustee in personal liability. Prior to taking any action under this Indenture, the Trustee shall be entitled to indemnification satisfactory to it against all losses and expenses caused by taking or not taking such action.

Section 6.06 Limitation on Suits.

(a) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no holder may pursue any remedy with respect to this Indenture or the Notes unless:

(i) such holder has previously given the Trustee written notice that an Event of Default is continuing,

(ii) holders of at least 30% in aggregate principal amount of the outstanding Notes have requested the Trustee in writing to pursue the remedy,

(iii) such holders have offered and, if requested, provided to the Trustee security or indemnity satisfactory to it against any loss, liability or expense,

(iv) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity, and

(v) the holders of a majority in principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60- day period.

(b) A holder may not use this Indenture to prejudice the rights of another holder or to obtain a preference or priority over another holder.

Section 6.07 Contractual Rights of the Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the contractual right of any holder to receive payment of principal of and interest on the Note held by such holder, on or after the respective due dates thereof, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder.

Section 6.08 Collection Suit by Trustee. If an Event of Default specified in Section 6.01(a) or (b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers or any other obligor on the Notes for the whole amount then due and owing (together with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in the Notes) and the amounts provided for in Section 7.07.

Section 6.09 Trustee May File Proofs of Claim. The Trustee may file such proofs of claim, statements of interest and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation, expenses disbursements and advances of the Trustee (including counsel, accountants, experts or such other professionals as the Trustee deems necessary, advisable or appropriate)) and the holders allowed in any judicial proceedings relative to the Issuer, the Subsidiary Guarantors, their creditors or their property, shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations, may vote on behalf of the holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.07. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any holder, or to authorize the Trustee to vote in respect of the claim of any holder in any such proceeding.

Section 6.10 Priorities. Subject to the terms of the First Lien Intercreditor Agreement and the Security Documents, any money or property collected by the Trustee pursuant to this Article VI and any other money or property distributable in respect of the Company's or any Subsidiary Guarantor's obligations under this Indenture (including upon exercise of any remedies in respect of Collateral) after an Event of Default shall be applied in the following order:

FIRST: to the Trustee and the First-Priority Collateral Agent for amounts due hereunder and under the Security Documents;

SECOND: to the holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and

THIRD: to the Company or, to the extent the Trustee collects any amount for any Subsidiary Guarantor, to such Subsidiary Guarantor or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to the holders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each holder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Article VI does not apply to a suit by the Trustee, a suit by a holder pursuant to Section 6.07 or a suit by holders of more than 10% in principal amount of the Notes.

Section 6.12 Waiver of Stay or Extension Laws. Neither the Company nor any Subsidiary Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company and the Subsidiary Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE VII

### TRUSTEE

#### Section 7.01 Duties of Trustee.

(a) The Trustee, prior to the occurrence of an Event of Default with respect to the Notes and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee (it being agreed that the permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty); and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee shall be under no duty to make any investigation as to any statement contained in any such instance, but may accept the same as conclusive evidence of the truth and accuracy of such statement or the correctness of such opinions. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the Trustee shall examine the form of certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided, however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the holders of not less than a majority in principal amount of the Notes at the time outstanding and indemnified in accordance with Section 6.05, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine (or is requested in writing by the holders as set forth above) to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney, at the expense of the Issuers and shall incur no liability of any kind by reason of such inquiry or investigation.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or the Security Documents at the request or direction of any of the holders pursuant to this Indenture, unless such holders shall have offered and, if requested, provided to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the



Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction of the holders of not less than a majority in principal amount of the Notes as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(j) Any action taken, or omitted to be taken, by the Trustee in good faith pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding upon future holders of Notes and upon Notes executed and delivered in exchange therefor or in place thereof.

(k) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee from the Issuers, any Subsidiary Guarantor or any holder, and such notice references the Notes and this Indenture.

(l) The Trustee may request that the Issuers deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(m) The Trustee shall not be responsible or liable for punitive, special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of actions.

(n) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers under this Indenture.

(o) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions; loss or malfunction of utilities, computer (hardware or software) or communication services; accidents; labor disputes; and acts of civil or military authorities and governmental action.

Section 7.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee. The First-Priority Collateral Agent and any Paying Agent or Registrar may do the same with like rights. However, the Trustee must comply with Section 7.10.

Section 7.04 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Subsidiary Guarantees or the Notes, it shall not be accountable for the Issuers' use of the proceeds from the Notes, and it shall not be responsible for any statement of the Issuers or any Subsidiary Guarantor in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication. The Trustee shall not be charged with knowledge of any Default or Event of Default under Sections 6.01(c), (d), (e), (f), (g), (h), (i), (j) or (k), or of the identity of any Significant Subsidiary unless either (a) a Trust Officer shall have actual knowledge thereof or (b) the Trustee shall have received written notice thereof in accordance with Section 13.02 hereof from the Issuers, any Subsidiary Guarantor or any holder. In accepting the trust hereby created, the Trustee acts solely as Trustee under this Indenture and not in its individual capacity and all persons, including without limitation the holders of Notes and the Issuers having any claim against the Trustee arising from this Indenture shall look only to the funds and accounts held by the Trustee hereunder for payment except as otherwise provided herein.

Section 7.05 Notice of Defaults. If a Default occurs and is continuing and is actually known to a Trust Officer of the Trustee, the Trustee shall mail, or deliver electronically if held by the Depository, to each holder of the Notes notice of the Default within the later of 90 days after it occurs or 30 days after it is actually known to a Trust Officer or written notice of it is received by the Trustee at the Corporate Trust Office of the Trustee from the Issuers, any Subsidiary Guarantor or any holder. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any Note, the Trustee may withhold notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of the holders of the Notes.

Section 7.06 [Reserved].

Section 7.07 Compensation and Indemnity. The Issuers and the Subsidiary Guarantors, jointly and severally, shall pay to the Trustee from time to time compensation for the Trustee's acceptance of this Indenture and its services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers and the Subsidiary Guarantors, jointly and severally, shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses, disbursements and advances Incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuers and the Subsidiary Guarantors, jointly and severally, shall indemnify the Trustee or any predecessor Trustee and their directors, officers, employees and agents against any and all loss, liability, claim, damage or expense (including reasonable attorneys' fees, disbursements and expenses and including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) Incurred by or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture, the Notes, any Subsidiary Guarantee or any Security Document against the Company or any Subsidiary Guarantor (including this Section 7.07) and defending itself against or investigating any claim (whether asserted by the Issuer, any Subsidiary Guarantor, any holder or any other Person). The obligation to pay such amounts shall survive the payment in full or defeasance of the Notes or

the removal or resignation of the Trustee. The Trustee shall notify the Issuers of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; *provided, however*, that any failure so to notify the Issuers shall not relieve the Issuers or any Subsidiary Guarantor of its indemnity obligations hereunder. The Issuers shall defend the claim and the indemnified party shall provide reasonable cooperation at the Issuers' expense in the defense. Such indemnified parties may have separate counsel and the Issuers and such Subsidiary Guarantor, as applicable, shall pay the fees, disbursements and expenses of such counsel; *provided, however*, that the Issuers shall not be required to pay such fees, disbursements and expenses if they assume such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no actual or potential conflict of interest between the Issuers and the Subsidiary Guarantors, as applicable, on the one hand, and such indemnified parties, on the other hand, in connection with such defense. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense Incurred by an indemnified party through such party's own willful misconduct, gross negligence or bad faith (as determined by a court of competent jurisdiction in a final, non-appealable order).

To secure the Issuers' and the Subsidiary Guarantors' payment obligations in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes.

The Issuers' and the Subsidiary Guarantors' payment obligations pursuant to this Section 7.07 shall survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any bankruptcy law or the resignation or removal of the Trustee. Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee Incurs expenses after the occurrence of a Default specified in Section 6.01(f) or with respect to the Issuers or any Significant Subsidiary, the expenses (including the charges and expenses of the Trustee's agents and counsel) are intended to constitute expenses of administration under the Bankruptcy Law.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

#### Section 7.08 Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Issuer. The holders of a majority in principal amount of the Notes may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Company shall remove the Trustee if:

- (i) the Trustee fails to comply with Section 7.10;
- (ii) the Trustee is adjudged bankrupt or insolvent;
- (iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns, is removed by the Company or by the holders of a majority in principal amount of the Notes and such holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers shall promptly appoint a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail (or otherwise deliver in accordance with the procedures of the Depository) a notice of its succession to the holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the Lien provided for in Section 7.07.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the holders of 10% in principal amount of the Notes may petition at the expense of the Issuers any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.10, any holder who has been a bona fide holder of a Note for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.08, the obligations of the Issuers and the Subsidiary Guarantors under Section 7.07 shall continue for the benefit of the retiring Trustee.

Section 7.09 Successor Trustee by Merger. Any organization or entity into which the Trustee may be merged or converted or with which it may be consolidated, or any organization or entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any organization or entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such organization or entity shall be otherwise qualified and eligible under this Article 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates of authentication shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of authentication of the Trustee shall have.

Section 7.10 Eligibility; Disqualification. The Trustee shall have a combined capital and surplus of at least \$100.0 million as set forth in its most recent published annual report of condition.

Section 7.11 [Reserved].

Section 7.12 Limitation on Duty of Trustee in Respect of Collateral; Indemnification.

(a) Beyond the exercise of reasonable care in the custody thereof, the Trustee and the First-Priority Collateral Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Trustee and the First-Priority Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. Each of the Trustee and the First-Priority Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee or the First-Priority Collateral Agent in good faith.

(b) The Trustee and the First-Priority Collateral Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on their respective part hereunder or under any Security Document, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Issuers to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. Subject to Section 7.01, the Trustee and the First-Priority Collateral Agent shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the First Lien Intercreditor Agreement, the Collateral Agreement or any other Security Document by the Issuers or the Subsidiary Guarantors. The Trustee and the First-Priority Collateral Agent may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or adviser, whether retained or employed by the Issuers or by the Trustee or the First-Priority Collateral Agent, in relation to any matter arising in the administration of this Indenture, the First Lien Intercreditor Agreement or the Security Documents.

DISCHARGE OF INDENTURE; DEFEASANCE

Section 8.01 Discharge of Liability on Notes; Defeasance.

(a) This Indenture shall be discharged and shall cease to be of further effect (except as to surviving rights, indemnities and immunities of the Trustee (and each Paying Agent and Registrar and the First-Priority Collateral Agent) and rights of registration or transfer or exchange of Notes, as expressly provided for in this Indenture) as to all outstanding Notes when:

(i) either (A) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuers and thereafter repaid to the Issuers or discharged from such trust) have been delivered to the Trustee for cancellation or (B) all of the Notes not delivered to the Trustee for cancellation (1) have become due and payable, (2) will become due and payable at their stated maturity within one year or (3) if redeemable at the option of the Issuers, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers, and the Issuers have irrevocably deposited or caused to be deposited with the Trustee funds in U.S. dollars in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit (in the case of Notes that have become due and payable), or to the date of maturity or redemption, as applicable, together with irrevocable written instructions from the Issuers directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be; *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of the redemption only required to be deposited with the Trustee on or prior to the date of the redemption;

(ii) the Issuers and/or the Subsidiary Guarantors have paid all other sums due and payable under this Indenture; and

(iii) the Issuers have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

(b) Subject to Sections 8.01(c) and 8.02, the Issuers at any time may terminate (i) all of its obligations under the Notes and this Indenture with respect to the holders of the Notes ("legal defeasance option"), and (ii) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.11, 4.12, 4.13 and 4.15 and the operation of Section 5.01 for the benefit of the holders of the Notes, and Sections 6.01(c), 6.01(d), 6.01(e), 6.01(f), 6.01(g) (in the case of Sections 6.01(f) and 6.01(g) with respect to Significant Subsidiaries only), 6.01(h), 6.01(i),

6.01(j) and 6.01(k) (“covenant defeasance option”). The Issuers may exercise their legal defeasance option notwithstanding their prior exercise of their covenant defeasance option. In the event that the Issuers terminate all of their obligations under the Notes and this Indenture (with respect to such Notes) by exercising their legal defeasance option or their covenant defeasance option, the obligations of each Subsidiary Guarantor with respect to its Subsidiary Guarantee and the Security Documents shall be terminated simultaneously with the termination of such obligations.

If the Issuers exercise their legal defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default. If the Issuers exercise their covenant defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default specified in Sections 6.01(c), 6.01(d), 6.01(e), 6.01(f), 6.01(g) (in the case of Sections 6.01(f) and (g), with respect to Significant Subsidiaries only), 6.01(h), 6.01(i), 6.01(j) or 6.01(k) or because of the failure of the Company to comply with Section 5.01(a) (iv).

Upon satisfaction of the conditions set forth herein and upon request of the Issuers, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuers terminated.

(c) Notwithstanding clauses (a) and (b) above, the Issuers’ obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08 and 2.09 and Article VII, including, without limitation, Sections 7.07 and 7.08 and in this Article VIII and the rights, indemnities and immunities of the Trustee under this Indenture shall survive until the Notes have been paid in full. Thereafter, the Issuers’ obligations in Sections 7.07, 7.08, 8.05 and 8.06 and the rights, indemnities and immunities of the Trustee under this Indenture shall survive such satisfaction and discharge.

Section 8.02 Conditions to Defeasance.

(a) The Issuers may exercise their legal defeasance option or its covenant defeasance option only if:

(i) the Issuers irrevocably deposit in trust with the Trustee money in U.S. dollars or U.S. Government Obligations in an amount that is sufficient for the payment of principal, premium (if any) and interest on the Notes to redemption or maturity, as the case may be;

(ii) the Issuers deliver to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations *plus* any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the Notes to maturity or redemption, as the case may be;

(iii) no Default specified in Section 6.01(f) or (g) with respect to the Issuers shall have occurred or is continuing on the date of such deposit;

(iv) the deposit does not constitute a default under any other material agreement or instrument binding on the Issuers;

(v) in the case of the legal defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel stating that (1) the Issuers have received from, or there has been published by, the Internal Revenue Service a ruling, or (2) since the date of this Indenture there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of the redemption only required to be deposited with the Trustee on or prior to the date of the redemption. Notwithstanding the foregoing, the Opinion of Counsel required by the immediately preceding sentence with respect to a legal defeasance need not be delivered if all of the Notes not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable at their Stated Maturity within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers;

(vi) such exercise does not impair the right of any holder to receive payment of principal of, premium, if any, and interest on such holder's Notes on or after the due dates therefore or to institute suit for the enforcement of any payment on or with respect to such holder's Notes;

(vii) in the case of the covenant defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; and

(viii) the Issuers deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes to be so defeased and discharged as contemplated by this Article VIII have been complied with.

(b) Before or after a deposit, the Issuers may make arrangements satisfactory to the Trustee for the redemption of such Notes at a future date in accordance with Article III.

Section 8.03 Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article VIII. The Trustee shall apply the deposited money and the money from U.S. Government Obligations through each Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes so discharged or defeased.



Section 8.04 Repayment to Issuers. Each of the Trustee and each Paying Agent shall promptly turn over to the Issuers upon request any money or U.S. Government Obligations held by it as provided in this Article VIII that, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee (which delivery shall only be required if U.S. Government Obligations have been so deposited), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article VIII.

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Issuers upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, holders entitled to the money must look to the Issuers for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

Section 8.05 Indemnity for U.S. Government Obligations. The Issuers shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

Section 8.06 Reinstatement. If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers' obligations under this Indenture and the Notes so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or any Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article VIII; *provided, however*, that, if the Issuers have made any payment of principal of, or interest on, any such Notes because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or any Paying Agent.

## ARTICLE IX

### AMENDMENTS AND WAIVERS

Section 9.01 Without Consent of the Holders.

(a) The Issuers and the Trustee may amend this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and/or the First Lien Intercreditor Agreement without notice to or the consent of any holder:

(i) to cure any ambiguity, omission, mistake, defect or inconsistency;

(ii) to provide for the assumption by a Successor Company (with respect to the Company) of the obligations of the Company under this Indenture, the Notes, the Security Documents and the First Lien Intercreditor Agreement or to provide for the assumption by a Successor Co-Issuer (with respect to the Co-Issuer) of the

obligations of the Co-Issuer under this Indenture, the Notes, the Security Documents and the First Lien Intercreditor Agreement;

(iii) to provide for the assumption by a Successor Subsidiary Guarantor (with respect to any Subsidiary Guarantor), as the case may be, of the obligations of a Subsidiary Guarantor under this Indenture, its Subsidiary Guarantee, the Security Documents and the First Lien Intercreditor Agreement;

(iv) to provide for uncertificated Notes in addition to or in place of certificated Notes; *provided, however*, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code;

(v) to conform the text of this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents or the First Lien Intercreditor Agreement to any provision of the “Description of New Notes” in the Offering Memorandum to the extent that such provision in this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents or the First Lien Intercreditor Agreement, as applicable, was intended by the Issuers to be a verbatim recitation of a provision in the “Description of New Notes” in the Offering Memorandum, as stated in an Officer’s Certificate;

(vi) to add a Subsidiary Guarantee or collateral with respect to the Notes;

(vii) to release or subordinate Collateral as permitted by this Indenture, the Security Documents or the First Lien Intercreditor Agreement;

(viii) to add additional secured creditors holding other First-Priority Obligations or Junior Lien Obligations so long as such obligations are not prohibited by this Indenture;

(ix) to add to the covenants of the Issuers for the benefit of the holders or to surrender any right or power conferred upon the Issuers;

(x) to comply with any requirement of the SEC in connection with qualifying or maintaining the qualification of, this Indenture under the TIA (if the Issuers elect to qualify this Indenture under the TIA);

(xi) to make any change that does not adversely affect the rights of any holder in any material respect; or

(xii) to make changes to provide for the issuance of Additional Notes, which shall have terms substantially identical in all material respects to the Initial Notes, and which shall be treated, together with any outstanding Initial Notes, as a single issue of securities.

(b) The First Lien Intercreditor Agreement may be amended without notice to or the consent of any holder, the Trustee or the First-Priority Collateral Agent in connection with

the permitted entry into the First Lien Intercreditor Agreement of any class of additional secured creditors holding other First-Priority Obligations.

(c) After an amendment under this Section 9.01 becomes effective, the Issuers shall mail or otherwise deliver a copy of such amendment to the holders; *provided* that this requirement shall be deemed satisfied to the extent disclosure of such amendment is made in accordance with Section 4.02; *provided, further*, that the failure to provide such copy to any of the holders shall not impair or affect the validity of an amendment under this Section 9.01.

Section 9.02 With Consent of the Holders. The Issuers and the Trustee may amend this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and the First Lien Intercreditor Agreement with the consent of the holders of at least a majority in principal amount of the Notes then outstanding voting as a single class (including consents obtained in connection with a tender offer or exchange for the Notes) and any past default or compliance with any provisions of this Indenture may be waived with the consent of the holders of at least a majority in principal amount of the Notes then outstanding voting as a single class (including consents obtained in connection with a tender offer or exchange for the Notes). However, without the consent of each holder of an outstanding Note affected, an amendment may not:

- (1) reduce the amount of Notes whose holders must consent to an amendment;
- (2) reduce the rate of or extend the time for payment of interest on any Note;
- (3) reduce the principal of or change the Stated Maturity of any Note;
- (4) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed in accordance with Article III;
- (5) make any Note payable in money other than that stated in such Note;
- (6) expressly subordinate the Notes or any Subsidiary Guarantee to any other Indebtedness of an Issuer or any Subsidiary Guarantor or subordinate the Liens securing the Notes or any Subsidiary Guarantee to Liens securing any other Indebtedness;
- (7) impair the contractual right of any holder to receive payment of principal of, premium, if any, and interest on such holder's Note on or after the due dates thereof or to institute suit for the enforcement of any payment on or with respect to such holder's Note;
- (8) make any change in the amendment provisions which require each holder's consent or in the waiver provisions; or

(9) make any change to the provisions of this Indenture, the First Lien Intercreditor Agreement or the Security Documents with respect to the *pro rata* application of proceeds of Collateral in respect of the Notes required thereby in a manner that by its terms modifies the application of such proceeds in respect of the Notes required thereby to be on a less than *pro rata* basis to the holder of such Note.

Except as expressly provided by this Indenture, the Security Documents or the First Lien Intercreditor Agreement, without the consent of the holders of at least 66.67% in an aggregate principal amount of the Notes then outstanding, no amendment or waiver may release all or substantially all of the Collateral from the Lien of this Indenture and the Security Documents with respect to the Notes.

It shall not be necessary for the consent of the holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Issuers shall mail, or otherwise deliver in accordance with the procedures of the Depository, to the holders a notice briefly describing such amendment. The failure to give such notice to all holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

### Section 9.03 Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment or a waiver by a holder of a Note shall bind the holder and every subsequent holder of that Note or portion of the Note that evidences the same debt as the consenting holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such holder or subsequent holder may revoke the consent or waiver as to such holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officer's Certificate from the Issuers certifying that the requisite principal amount of Notes have consented. After an amendment or waiver becomes effective, it shall bind every holder. An amendment or waiver becomes effective upon the (i) receipt by the Issuers or the Trustee of consents by the holders of the requisite principal amount of securities, (ii) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment or waiver and (iii) execution of such amendment or waiver (or supplemental indenture) by the Issuers, the Subsidiary Guarantors and the Trustee.

(b) The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

Section 9.04 Notation on or Exchange of Notes . If an amendment, supplement or waiver changes the terms of a Note, the Issuers may require the holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the holder. Alternatively, if the Issuers or the Trustee so determine, the Issuers in exchange for the Note shall issue and, upon written order of the Issuers signed by an Officer of each Issuer, the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment, supplement or waiver.

Section 9.05 Trustee to Sign Amendments . The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article IX if the amendment does not adversely affect the rights, duties, liabilities, indemnities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment, the Trustee shall be entitled to receive indemnity satisfactory to it and shall be provided with, and (subject to Section 7.01) shall be fully protected in relying upon, (i) an Officer's Certificate, (ii) an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers and any Subsidiary Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof, (iii) a copy of the resolution of the Board of Directors, certified by the Secretary or Assistant Secretary of the Issuer, authorizing the execution of such amendment, supplement or waiver and (iv) if such amendment, supplement or waiver is executed pursuant to Section 9.02, evidence reasonably satisfactory to the Trustee of the consent of the holders required to consent thereto.

Section 9.06 Additional Voting Terms; Calculation of Principal Amount . All Notes issued under this Indenture shall vote and consent together on all matters (as to which any of such Notes may vote) as one class and no Notes will have the right to vote or consent as a separate class on any matter. Determinations as to whether holders of the requisite aggregate principal amount of Notes have concurred in any direction, waiver or consent shall be made in accordance with this Article IX and Section 2.13.

## **ARTICLE X**

### **RANKING OF NOTE LIENS**

Section 10.01 Relative Rights . The First Lien Intercreditor Agreement governs the relative rights and remedies, as lienholders, among holders of Liens securing First- Priority Obligations. Nothing in this Indenture or the First Lien Intercreditor Agreement will:

(a) impair, as between the Issuers and holders of Notes, the obligation of the Issuers which is absolute and unconditional, to pay principal of, premium and interest on Notes in accordance with their terms or to perform any other obligation of the Issuers or any other obligor under this Indenture, the Notes, the Subsidiary Guarantees and the Security Documents;

(b) restrict the right of any holder to sue for payments that are then due and owing, in a manner not inconsistent with the provisions of the First Lien Intercreditor Agreement;

(c) prevent the Trustee, the First-Priority Collateral Agent or any holder from exercising against the Issuers or any other obligor any of its other available remedies upon a Default or Event of Default (other than its rights as a secured party, which are subject to the First Lien Intercreditor Agreement); or

(d) restrict the right of the Trustee, the First-Priority Collateral Agent or any holder:

(1) to file and prosecute a petition seeking an order for relief in an involuntary bankruptcy case as to any obligor or otherwise to commence, or seek relief commencing, any insolvency or liquidation proceeding involuntarily against any obligor;

(2) to make, support or oppose any request for an order for dismissal, abstention or conversion in any insolvency or liquidation proceeding;

(3) to make, support or oppose, in any insolvency or liquidation proceeding, any request for an order extending or terminating any period during which the debtor (or any other Person) has the exclusive right to propose a plan of reorganization or other dispositive restructuring or liquidation plan therein;

(4) to seek the creation of, or appointment to, any official committee representing creditors (or certain of the creditors) in any insolvency or liquidation proceedings and, if appointed, to serve and act as a member of such committee without being in any respect restricted or bound by, or liable for, any of the obligations under this Article X;

(5) to seek or object to the appointment of any professional person to serve in any capacity in any insolvency or liquidation proceeding or to support or object to any request for compensation made by any professional person or others therein;

(6) to make, support or oppose any request for order appointing a trustee or examiner in any insolvency or liquidation proceedings; or

(7) otherwise to make, support or oppose any request for relief in any insolvency or liquidation proceeding that it is permitted by law to make, support or oppose if it were a holder of unsecured claims, or as to any matter relating to (x) any plan of reorganization or other restructuring or liquidation plan or (y) the administration of the estate or the disposition of the case or proceeding (in each case except as set forth in the First Lien Intercreditor Agreement).

## **ARTICLE XI**

### **COLLATERAL**

Section 11.01 Security Documents.

(a) The payment of the principal of and interest and premium, if any, on the Notes when due, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise and whether by the Issuers pursuant to the Notes or by the Subsidiary Guarantors pursuant to the Subsidiary Guarantees, the payment of all other Notes Obligations and the performance of all other obligations of the Issuers and the Subsidiary Guarantors under this Indenture, the Notes, the Subsidiary Guarantees and the Security Documents (and other First-Priority Obligations if required thereby) shall be secured as provided in the Security Documents, which the Issuers and the applicable Subsidiary Guarantors will enter into on the Issue Date and will be secured by Security Documents thereafter delivered as required or permitted by this Indenture. The Issuers shall, and shall cause each Restricted Subsidiary to, and each Restricted Subsidiary shall, make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) and all other actions as are necessary or required by the Security Documents to maintain (at the sole cost and expense of the Issuers and the Restricted Subsidiaries) the security interest created by the Security Documents in the Collateral (other than with respect to any Collateral the security interest in which is not required to be perfected under the Security Documents) as a perfected security interest subject only to Permitted Liens and Liens permitted by Section 4.12.

(b) Notwithstanding the foregoing, the Issuers shall use commercially reasonable efforts to perfect all security interests in the Collateral (other than Excluded Property) on the Issue Date and, with respect to any Collateral (other than Excluded Property), for which security interests have not been granted or perfected on the Issue Date, use commercially reasonable efforts to cause the taking of additional actions required to grant or perfect the security interest in the Collateral required to be pledged under this Indenture and the Security Documents within 120 days following the Issue Date.

Section 11.02 First-Priority Collateral Agent.

(a) The First-Priority Collateral Agent is authorized and empowered to appoint one or more co-First-Priority Collateral Agents as it deems necessary or appropriate.

(b) Subject to Section 7.01, neither the Trustee nor the First-Priority Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Lien securing First-Priority Obligations, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens securing First-Priority Obligations or the Security Documents or any delay in doing so.

(c) The First-Priority Collateral Agent will be subject to such directions as may be given it by the Trustee from time to time (as required or permitted by this Indenture); *provided* that in the event of conflict between directions received pursuant to the Security Documents and the First Lien Intercreditor Agreement and directions received hereunder, the First-Priority Collateral Agent will be subject to directions received pursuant to the Security Documents and the First Lien Intercreditor Agreement. Except as directed by the Trustee as

required or permitted by this Indenture and any other representatives pursuant to the Security Documents or the First Lien Intercreditor Agreement, the First-Priority Collateral Agent will not be obligated:

- (1) to act upon directions purported to be delivered to it by any other Person;
- (2) to foreclose upon or otherwise enforce any Lien securing First-Priority Obligations; or
- (3) to take any other action whatsoever with regard to any or all of the Liens securing First-Priority Obligations, Security Documents or Collateral.

(d) The First-Priority Collateral Agent will be accountable only for amounts that it actually receives as a result of the enforcement of the Liens securing First-Priority Obligations or the Security Documents.

(e) In acting as First-Priority Collateral Agent or co-First-Priority Collateral Agent, the First-Priority Collateral Agent and each co-First-Priority Collateral Agent may rely upon and enforce each and all of the rights, powers, immunities, indemnities and benefits of the Trustee under Article VII hereof.

(f) The holders of Notes agree that the First-Priority Collateral Agent shall be entitled to the rights, privileges, protections, immunities, indemnities and benefits provided to the First-Priority Collateral Agent by this Indenture and the Security Documents. Furthermore, each holder of a Note, by accepting such Note, consents to the terms of and authorizes and directs the Trustee (in each of its capacities) and the First-Priority Collateral Agent to enter into and perform each of the First Lien Intercreditor Agreement and Security Documents in each of its capacities thereunder.

(g) If the Issuers (i) Incur Other First-Priority Obligations at any time when no intercreditor agreement is in effect or at any time when Indebtedness constituting Other First-Priority Obligations entitled to the benefit of the First Lien Intercreditor Agreement is concurrently retired, and (ii) deliver to the First-Priority Collateral Agent an Officer's Certificate so stating and requesting the First-Priority Collateral Agent to enter into an intercreditor agreement (on substantially the same terms as the First Lien Intercreditor Agreement) in favor of a designated agent or representative for the holders of the Other First-Priority Obligations so Incurred, the First-Priority Collateral Agent shall (and is hereby authorized and directed to) enter into such intercreditor agreement, bind the holders on the terms set forth therein and perform and observe its obligations thereunder.

(h) At all times when the Trustee is not itself the First-Priority Collateral Agent, the Issuers will deliver to the Trustee copies of all Security Documents delivered to the First-Priority Collateral Agent and copies of all documents delivered to the First-Priority Collateral Agent pursuant to this Indenture and the Security Documents.



(i) If the Issuers Incur any Junior Lien Obligations and deliver to the First- Priority Collateral Agent and/or the Trustee, as applicable, an Officer's Certificate requesting the First-Priority Collateral Agent and/or the Trustee, as applicable, to enter into an intercreditor agreement with a designated agent or representative for the holders of the Junior Lien Obligations so Incurred and certifying that such intercreditor agreement provides for the subordination of Liens of such Junior Lien Obligations to the Liens securing the Notes Obligations and other intercreditor provisions with respect to such Junior Lien Obligations that are customary in the good faith determination of the Company, the First-Priority Collateral Agent and/or the Trustee, as applicable, shall (and each is hereby authorized and directed to) enter into such intercreditor agreement, bind the holders on the terms set forth therein and perform and observe its obligations thereunder.

(j) Notwithstanding anything in this Indenture to the contrary and for the avoidance of doubt, the First-Priority Collateral Agent and the Trustee shall have no duty to act outside of the United States of America in respect of any Collateral.

Section 11.03 Authorization of Actions to Be Taken.

(a) Each holder of Notes, by its acceptance thereof, appoints the First-Priority Collateral Agent as its collateral agent under the Security Documents, consents and agrees to the terms of each Security Document and the First Lien Intercreditor Agreement as originally in effect and as amended, supplemented or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Trustee and/or the First-Priority Collateral Agent to enter into the First Lien Intercreditor Agreement and the Security Documents to which it is a party, authorizes and empowers the Trustee to direct the First-Priority Collateral Agent to enter into, and the First-Priority Collateral Agent to execute and deliver, the Security Documents and First Lien Intercreditor Agreement and authorizes and empowers the Trustee and the First-Priority Collateral Agent to bind the holders of Notes and other holders of Obligations secured by the Security Documents as set forth in the Security Documents to which it is a party and the First Lien Intercreditor Agreement and to perform its obligations and exercise its rights and powers thereunder. Subject to the provisions of the First Lien Intercreditor Agreement and the Security Documents, the Trustee and the First-Priority Collateral Agent are authorized and empowered to receive for the benefit of the holders of Notes any funds collected or distributed under the Security Documents to which the First-Priority Collateral Agent or Trustee is a party and to make further distributions of such funds to the holders of Notes according to the provisions of this Indenture.

(b) Subject to the provisions of Article VI, Section 7.01 and Section 7.02 hereof, the First Lien Intercreditor Agreement and the Security Documents, upon the occurrence and continuance of an Event of Default, the Trustee may, in its sole discretion and without the consent of the holders, direct, on behalf of the holders, the First-Priority Collateral Agent to take all actions it deems necessary or appropriate in order to:

- (1) foreclose upon or otherwise enforce any or all of the Liens securing the First-Priority Obligations;

(2) enforce any of the terms of the Security Documents to which the First-Priority Collateral Agent or Trustee is a party; or

(3) collect and receive payment of any and all Notes Obligations.

Subject to the First Lien Intercreditor Agreement, the Trustee is authorized and empowered to institute and maintain, or direct the First-Priority Collateral Agent to institute and maintain, such suits and proceedings as it may deem expedient to protect or enforce the Liens securing the First-Priority Obligations or the Security Documents to which the First-Priority Collateral Agent or Trustee is a party or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of the Security Documents to which the First-Priority Collateral Agent or Trustee is a party or this Indenture, and such suits and proceedings as the Trustee or the First-Priority Collateral Agent may deem expedient to preserve or protect its interests and the interests of the holders of Notes in the Collateral, including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of holders, the Trustee or the First-Priority Collateral Agent.

Section 11.04 Release of Liens. (a) Notwithstanding anything to the contrary in the Security Documents or the First Lien Intercreditor Agreement, Collateral may be released from the Lien and security interest created by the Security Documents to secure the Notes and obligations under this Indenture at any time or from time to time in accordance with the provisions of the First Lien Intercreditor Agreement or the Security Documents or as provided hereby. The applicable assets included in the Collateral shall be automatically released from the Liens securing the Notes, and the applicable Subsidiary Guarantor shall be automatically released from its obligations under this Indenture and the Security Documents, under any one or more of the following circumstances or any applicable circumstance as provided in the First Lien Intercreditor Agreement or the Security Documents:

(1) to enable the Issuers or any Subsidiary Guarantor to consummate the disposition (other than any disposition to an Issuer or another Subsidiary Guarantor) of such property or assets to the extent not prohibited under Section 4.06;

(2) in respect of the property and assets of a Subsidiary Guarantor, upon the designation of such Subsidiary Guarantor to be an Unrestricted Subsidiary in accordance with Section 4.04 and the definition of "Unrestricted Subsidiary," and such Subsidiary Guarantor shall be automatically released from its obligations hereunder and under the Security Documents;

(3) in respect of the property and assets of a Subsidiary Guarantor, upon the release or discharge of the Subsidiary Guarantee of such Subsidiary Guarantor in accordance with this Indenture;

(4) in respect of any property and assets of an Issuer or a Subsidiary Guarantor that would constitute Collateral but is at such time not subject to a Lien securing First-Priority Obligations (other than the Notes Obligations), other than any property or assets that cease to be subject to a Lien securing First-Priority Obligations in connection with a Discharge of First-Priority Obligations; *provided* that if such property and assets are subsequently subject to a Lien securing First-Priority Obligations (other than Excluded Property), such property and assets shall subsequently constitute Collateral under this Indenture;

(5) in respect of any Common Collateral transferred to a third party or otherwise disposed of in connection with any enforcement by the First-Priority Collateral Agent in accordance with the First Lien Intercreditor Agreement;

(6) pursuant to an amendment or waiver in accordance with Article IX;  
and

(7) if the Notes have been discharged or defeased pursuant to Section 8.01.

In addition, (i) the security interests granted pursuant to the Security Documents securing the Obligations shall automatically terminate and/or be released all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the applicable Pledgors (as defined in the Collateral Agreement), as of the date when all the Obligations under the Notes, this Indenture and the Security Documents (other than contingent or unliquidated obligations or liabilities not then due) have been paid in full in cash or immediately available funds; and (ii) the security interests granted pursuant to the Security Documents securing the Obligations shall automatically terminate as of the date when the holders of at least 66.67% in an aggregate principal amount of the Notes then outstanding consent to the termination of the Security Documents.

In connection with any termination or release pursuant to this Section 11.04(a), the First-Priority Collateral Agent shall execute and deliver to any Pledgor (as defined in the Collateral Agreement), at such Pledgor's expense, all documents that such Pledgor shall reasonably request to evidence such termination or release (including, without limitation, UCC termination statements), and will duly assign and transfer to such Pledgor, such of the Pledged Collateral (as defined in the Collateral Agreement) that may be in the possession of the First- Priority Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Indenture or the Security Documents. Any execution and delivery of documents pursuant to this Section 11.04(a) shall be without recourse to or warranty by the First-Priority Collateral Agent. In connection with any release pursuant to this Section 11.04(a), the Pledgors shall be permitted to take any action in connection therewith consistent with such release including, without limitation, the filing of UCC termination statements.

Upon the receipt of an Officer's Certificate from the Issuers, as described in Section 11.04(b) below, if applicable, and any necessary or proper instruments of termination, satisfaction or release prepared by the Issuers, the First-Priority Collateral Agent shall execute, deliver or acknowledge such instruments or releases to evidence the release of any Collateral

permitted to be released pursuant to this Indenture or the Security Documents or the First Lien Intercreditor Agreement.

(b) Notwithstanding anything herein to the contrary, in connection with (x) any release of Collateral pursuant to Section 11.04(a)(2), (3) or (6), such Collateral may not be released from the Lien and security interest created by the Security Documents and (y) any release of Collateral pursuant to Section 11.04(a)(1), (4) and (5) the First-Priority Collateral Agent shall not be required to execute, deliver or acknowledge any instruments of termination, satisfaction or release unless, in each case, an Officer's Certificate and Opinion of Counsel certifying that all conditions precedent, including, without limitation, this Section 11.04, have been met, and stating under which of the circumstances set forth in Section 11.04(a) above the Collateral is being released, have been delivered to the First-Priority Collateral Agent on or prior to the date of such release or, in the case of clause (y) above, the date on which the First-Priority Collateral Agent executes any such instrument.

(c) Notwithstanding anything herein to the contrary, at any time when a Default or Event of Default has occurred and is continuing and the maturity of the Notes has been accelerated (whether by declaration or otherwise) and the Trustee has delivered a notice of acceleration to the First-Priority Collateral Agent, no release of Collateral pursuant to the provisions of this Indenture or the Security Documents will be effective as against the holders, except as otherwise provided in the First Lien Intercreditor Agreement.

Section 11.05 Powers Exercisable by Receiver or Trustee. In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article XI upon the Issuers or the Subsidiary Guarantors with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuers or the Subsidiary Guarantors or of any officer or officers thereof required by the provisions of this Article XI; and if the Trustee, First-Priority Collateral Agent or a nominee of the Trustee or First-Priority Collateral Agent shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee, First-Priority Collateral Agent or a nominee of the Trustee or First-Priority Collateral Agent.

Section 11.06 Release Upon Termination of the Issuers' Obligations. In the event (i) that the Issuers deliver to the Trustee an Officer's Certificate and Opinion of Counsel certifying that all the Obligations under this Indenture, the Notes and the Security Documents have been satisfied and discharged by the payment in full of the Issuers' Obligations under the Notes, this Indenture and the Security Documents, and all such Obligations have been so satisfied, or (ii) a discharge, legal defeasance or covenant defeasance of this Indenture occurs under Article VIII, the Trustee shall deliver to the Issuers and the First-Priority Collateral Agent a notice stating that the Trustee, on behalf of the holders, disclaims and gives up any and all rights it has in or to the Collateral, and any rights it has under the Security Documents, and upon receipt by the First-Priority Collateral Agent of such notice, the First-Priority Collateral Agent shall be deemed not to hold a Lien in the Collateral on behalf of the Trustee and shall do or cause to be done all acts reasonably necessary at the request and expense of the Issuers to release such Lien as soon as is reasonably practicable.

Section 11.07 Designations. Except as provided in the next sentence, for purposes of the provisions hereof and the First Lien Intercreditor Agreement requiring the Issuers to designate Indebtedness for the purposes of the terms Other First-Priority Obligations, Junior Lien Obligations or any other such designations hereunder or under the First Lien Intercreditor Agreement, any such designation shall be sufficient if the relevant designation provides in writing that such Other First-Priority Obligations or Junior Lien Obligations are permitted under this Indenture and is signed on behalf of the Company by an Officer and delivered to the Trustee and the First-Priority Collateral Agent. For all purposes hereof and the First Lien Intercreditor Agreement, the Company hereby designates the Obligations pursuant to the Credit Agreement as in effect on the Issue Date as First-Priority Obligations.

## ARTICLE XII

### GUARANTEE

#### Section 12.01 Subsidiary Guarantee.

(a) Each Subsidiary Guarantor hereby jointly and severally, irrevocably and unconditionally guarantees, on a senior basis, as a primary obligor and not merely as a surety, to each holder and to the Trustee and its successors and assigns (i) the performance and punctual payment when due, whether at Stated Maturity, by acceleration or otherwise, of all obligations of the Issuers under this Indenture and the Notes, whether for payment of principal of, premium, if any, or interest on the Notes and all other monetary obligations of the Company under this Indenture and the Notes and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Issuers whether for fees, expenses, indemnification or otherwise under this Indenture and the Notes (all the foregoing being hereinafter collectively called the “Guaranteed Obligations”). The Guaranteed Obligations of all Subsidiary Guarantors shall be secured by first-priority security interests (subject to Permitted Liens and Liens permitted by Section 4.12) in the Collateral owned by such Subsidiary Guarantor on a *pari passu* basis with all other First-Priority Obligations pursuant to the terms of the Security Documents and the First Lien Intercreditor Agreement, but subject to the terms and conditions of the Security Documents and the First Lien Intercreditor Agreement. Each Subsidiary Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from any Subsidiary Guarantor, and that each Subsidiary Guarantor shall remain bound under this Article XII notwithstanding any extension or renewal of any Guaranteed Obligation.

(b) Each Subsidiary Guarantor waives presentation to, demand of payment from and protest to the Issuers of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Subsidiary Guarantor waives notice of any default under the Notes or the Guaranteed Obligations. The obligations of each Subsidiary Guarantor hereunder shall not be affected by (i) the failure of any holder or the Trustee to assert any claim or demand or to enforce any right or remedy against the Issuers or any other Person under this Indenture, the Notes or any other agreement or otherwise; (ii) any extension or renewal of this Indenture, the Notes or any other agreement; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement; (iv) the release of any security held by any holder or the Trustee for the Guaranteed Obligations or each Subsidiary

Guarantor; (v) the failure of any holder or Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (vi) any change in the ownership of each Subsidiary Guarantor, except as provided in Section 12.02(b). Each Subsidiary Guarantor hereby waives any right to which it may be entitled to have its obligations hereunder divided among the Subsidiary Guarantors, such that such Subsidiary Guarantor's obligations would be less than the full amount claimed.

(c) Each Subsidiary Guarantor hereby waives any right to which it may be entitled to have the assets of the Issuers first be used and depleted as payment of the Issuers' or such Subsidiary Guarantor's obligations hereunder prior to any amounts being claimed from or paid by such Subsidiary Guarantor hereunder. Each Subsidiary Guarantor hereby waives any right to which it may be entitled to require that the Issuers be sued prior to an action being initiated against such Subsidiary Guarantor.

(d) Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any holder or the Trustee to any security held for payment of the Guaranteed Obligations.

(e) The Subsidiary Guarantee of each Subsidiary Guarantor is, to the extent and in the manner set forth in this Article XII, equal in right of payment to all existing and future Pari Passu Indebtedness of such Subsidiary Guarantor, and senior in right of payment to all existing and future Subordinated Indebtedness of such Subsidiary Guarantor.

(f) Except as expressly set forth in Sections 8.01(b), 12.02 and 12.06, the obligations of each Subsidiary Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Subsidiary Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any holder or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Subsidiary Guarantor or would otherwise operate as a discharge of any Subsidiary Guarantor as a matter of law or equity.

(g) Each Subsidiary Guarantor agrees that its Subsidiary Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations. Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any holder or the Trustee upon the bankruptcy or reorganization of the Issuers or otherwise.

(h) In furtherance of the foregoing and not in limitation of any other right which any holder or the Trustee has at law or in equity against any Subsidiary Guarantor by virtue hereof, upon the failure of the Issuers to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Subsidiary Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the holders or the Trustee an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations, (ii) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the Issuers to the holders and the Trustee.

(i) Each Subsidiary Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the holders in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each Subsidiary Guarantor further agrees that, as between it, on the one hand, and the holders and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article VI for the purposes of the Subsidiary Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article VI, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purposes of this Section 12.01.

(j) Each Subsidiary Guarantor also agrees to pay any and all costs and expenses (including reasonable out of pocket attorneys' fees and expenses) Incurred by the Trustee, the First-Priority Collateral Agent or any holder in enforcing any rights under this Section 12.01.

(k) Upon request of the Trustee, each Subsidiary Guarantor shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

#### Section 12.02 Limitation on Liability.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by each Subsidiary Guarantor shall not exceed the maximum amount that can be hereby guaranteed by the applicable Subsidiary Guarantor without rendering the Subsidiary Guarantee or this Indenture, as it relates to such Subsidiary Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally or capital maintenance or corporate benefit rules applicable to guarantees for obligations of affiliates.

(b) A Subsidiary Guarantee as to any Restricted Subsidiary that is (or becomes) a party hereto on the date hereof or that executes a supplemental indenture in accordance with Section 4.11 hereof and provides a guarantee shall terminate and be of no

further force or effect and such Subsidiary Guarantee shall be deemed to be automatically released from all obligations under this Article XII upon any of the following:

- (i) the sale, disposition, exchange or other transfer (including through merger, consolidation, amalgamation or otherwise) of the Capital Stock (including any sale, disposition or other transfer following which the applicable Subsidiary Guarantor is no longer a Restricted Subsidiary), of the applicable Subsidiary Guarantor if such sale, disposition, exchange or other transfer is made in a manner not in violation of this Indenture;
- (ii) the designation of such Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the provisions of Section 4.04 and the definition of “Unrestricted Subsidiary”;
- (iii) [reserved];
- (iv) the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Article VIII or if the Issuers’ obligations under this Indenture are discharged in accordance with the terms of this Indenture;
- (v) such Subsidiary ceasing to be a Subsidiary as a result of any foreclosure of any pledge or security interest in favor of the First-Priority Obligations or other exercise of remedies in respect thereof, subject to, in each case, the application of the proceeds of such foreclosure or exercise of remedies in the manner described in the Security Documents; and
- (vi) the occurrence of a Covenant Suspension Event.

Section 12.03 [Reserved].

Section 12.04 Successors and Assigns. This Article XII shall be binding upon each Subsidiary Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee and the holders and, in the event of any transfer or assignment of rights by any holder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

Section 12.05 No Waiver. Neither a failure nor a delay on the part of either the Trustee or the holders in exercising any right, power or privilege under this Article XII shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article XII at law, in equity, by statute or otherwise.

Section 12.06 Modification. No modification, amendment or waiver of any provision of this Article XII, nor the consent to any departure by any Subsidiary Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for



which given. No notice to or demand on any Subsidiary Guarantor in any case shall entitle any Subsidiary Guarantor to any other or further notice or demand in the same, similar or other circumstances.

Section 12.07 Execution of Supplemental Indenture for Future Subsidiary Guarantors. Each Subsidiary which is required to become a Subsidiary Guarantor of the Notes pursuant to Section 4.11 shall promptly execute and deliver to the Trustee a supplemental indenture in the form of Exhibit C hereto pursuant to which such Subsidiary shall become a Subsidiary Guarantor under this Article XII and shall guarantee the Notes. Concurrently with the execution and delivery of such supplemental indenture, the Issuers shall deliver to the Trustee an Officer's Certificate as provided in Section 9.05; however, for the avoidance of doubt, no Opinion of Counsel shall be required in connection with the execution and delivery of a supplemental indenture for the addition of a Subsidiary Guarantor under this Indenture.

Section 12.08 Non-Impairment. The failure to endorse a Subsidiary Guarantee on any Note shall not affect or impair the validity thereof.

### ARTICLE XIII

#### MISCELLANEOUS

Section 13.01 [Reserved].

Section 13.02 Notices.

(a) Any notice or communication required or permitted hereunder shall be in writing and delivered in person, via facsimile or mailed by first-class mail addressed as follows:

if to the Issuers or a Subsidiary Guarantor:

c/o Exela Technologies, Inc.  
2701 East Grauwyler Road  
Irving, Texas 75061  
Attention: President  
Email: legalnotices@exelatech.com

with copies to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Brian Kim, Catherine Goodall  
Fax: (212) 757-3990

if to the Trustee:

U.S. Bank National Association  
West Side Flats

60 Livingston Ave.  
St. Paul, Minnesota 55107  
Attention: Administrator—Exela Intermediate LLC  
Fax: (651) 466-7430

The Issuers or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(b) Any notice or communication mailed to a holder shall be mailed, first class mail, to the holder at the holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

(c) Failure to mail a notice or communication to a holder or any defect in it shall not affect its sufficiency with respect to other holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee are effective only if received.

The Trustee may, in its sole discretion, agree to accept and act upon instructions or directions pursuant to this Indenture sent by e-mail, facsimile transmission or other similar electronic methods. Electronic signatures believed by the Trustee to comply with the E-SIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee) shall be deemed original signatures for all purposes. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties. Notwithstanding the foregoing, the Trustee may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any such electronic instructions.

Notwithstanding anything to the contrary contained herein, as long as the Notes are in the form of a Global Note, notice to the holders may be made electronically (or otherwise) in accordance with procedures of the Depository.

Section 13.03 [Reserved].

Section 13.04 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuers to the Trustee to take or refrain from taking any action under this Indenture, the Issuers shall furnish to the Trustee at the request of the Trustee:

(a) an Officer's Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 13.05 Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than pursuant to Section 4.09) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with; *provided, however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 13.06 When Notes Disregarded. In determining whether the holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuers, the Subsidiary Guarantors or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuers or the Subsidiary Guarantors shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which the Trustee actually knows are so owned shall be so disregarded. Subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

Section 13.07 Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of the holders. The First-Priority Collateral Agent, the Registrar and a Paying Agent may make reasonable rules for their functions.

Section 13.08 Legal Holidays. If a payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such payment date if it were a Business Day for the intervening period. If a regular Record Date is not a Business Day, the Record Date shall not be affected.

Section 13.09 GOVERNING LAW. THIS INDENTURE, THE NOTES AND THE SUBSIDIARY GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

Section 13.10 No Recourse Against Others. No director, officer, employee, manager, incorporator or holder of any Equity Interests in the Company or any direct or indirect parent companies, as such, shall have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Subsidiary Guarantees or this Indenture, as applicable, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 13.11 Successors. All agreements of the Issuers and the Subsidiary Guarantors in this Indenture and the Notes shall bind such person's successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 13.12 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. Delivery of an executed counterpart of a signature page to this Indenture by telecopier, facsimile or other electronic transmission (i.e., a "pdf" or "tif") (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) shall be effective as delivery of a manually executed counterpart thereof.

Section 13.13 Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 13.14 Indenture Controls. If and to the extent that any provision of the Notes limits, qualifies or conflicts with a provision of this Indenture, such provision of this Indenture shall control.

Section 13.15 Severability. In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 13.16 Intercreditor Agreement. The terms of this Indenture are subject to the terms of the First Lien Intercreditor Agreement.

Section 13.17 Waiver of Jury Trial. EACH OF THE ISSUERS, THE SUBSIDIARY GUARANTORS AND THE TRUSTEE HEREBY (AND EACH HOLDER OF A NOTE BY ITS ACCEPTANCE THEREOF) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN

ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

*[Remainder of page intentionally left blank.]*

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

EXELA INTERMEDIATE LLC,  
as Company

By: /s/ Suresh Yannamani  
Name: Suresh Yannamani  
Title: President

EXELA FINANCE INC.,  
as Co-Issuer

By: /s/ Suresh Yannamani  
Name: Suresh Yannamani  
Title: President

*[Signature Page to Indenture]*

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**SUBSIDIARY GUARANTORS:**

SOURCEHOV HOLDINGS, INC.  
SOURCEHOV LLC  
CORPSOURCE HOLDINGS, LLC  
SOURCECORP, INCORPORATED  
SOURCECORP BPS INC.  
DELIVEREX, LLC  
UNITED INFORMATION SERVICES, INC.  
ECONOMIC RESEARCH SERVICES, INC.  
SOURCECORP LEGAL INC.  
RUST CONSULTING, INC.  
SOURCEHOV HEALTHCARE, INC.  
KINSELLA MEDIA LLC  
HOV SERVICES, LLC  
HOV ENTERPRISE SERVICES, INC.  
MERIDIAN CONSULTING GROUP, LLC  
RUSTIC CANYON III, LLC  
HOV SERVICES, INC.  
CHARTER LASON, INC.  
LASON INTERNATIONAL, INC.  
SOURCECORP MANAGEMENT, INC.  
PANGEA ACQUISITIONS INC.,  
each as a Subsidiary Guarantor

By: /s/ Suresh Yannamani

\_\_\_\_\_  
Name: Suresh Yannamani

Title: President

*[Signature Page to Indenture]*

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BANCTEC GROUP LLC  
BANCTEC, INC.  
BANCTEC (PUERTO RICO), INC.  
DOCUDATA SOLUTIONS, L.C.  
BANCTEC INTERMEDIATE HOLDING, INC.  
BTC INTERNATIONAL HOLDINGS, INC.  
HOVG, LLC  
MERCO HOLDINGS, LLC  
MANAGED CARE PROFESSIONALS, LLC  
BTC VENTURES, INC.  
RECOGNITION MEXICO HOLDING INC.  
DFG2 HOLDINGS, LLC  
DFG2, LLC  
DFG UK, LLC  
TRAC HOLDINGS, LLC,  
each as a Subsidiary Guarantor

By: /s/ Suresh Yannamani

\_\_\_\_\_  
Name: Suresh Yannamani

Title: President

*[Signature Page to Indenture]*

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FTS PARENT INC.  
TRANSCENTRA, INC.  
J & B SOFTWARE, INC.  
REGULUS HOLDING INC.  
REGULUS GROUP LLC  
REGULUS GROUP II LLC  
REGULUS AMERICA LLC  
REGULUS INTEGRATED SOLUTIONS LLC  
EXELA RE LLC  
REGULUS WEST LLC,  
each as a Subsidiary Guarantor

By: /s/ Suresh Yannamani  
Name: Suresh Yannamani  
Title: President

RC4 CAPITAL, LLC,  
as a Subsidiary Guarantor

By: /s/ Suresh Yannamani  
Name: Suresh Yannamani  
Title: President

*[Signature Page to Indenture]*

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NOVITEX HOLDINGS, INC.  
NOVITEX INTERMEDIATE, LLC  
NOVITEX ACQUISITION, LLC  
NOVITEX ENTERPRISE SOLUTIONS, INC.  
SIG – GP, L.L.C., A LIMITED LIABILITY COMPANY  
IBIS CONSULTING, INC.,  
each as a Subsidiary Guarantor

By: /s/ Suresh Yannamani

\_\_\_\_\_  
Name: Suresh Yannamani

Title: President

SERVICES INTEGRATION GROUP, L.P.  
as a Subsidiary Guarantor

By: SIG – GP, L.L.C., A LIMITED LIABILITY  
COMPANY, its General Partner

By: /s/ Suresh Yannamani

\_\_\_\_\_  
Name: Suresh Yannamani

Title: President

NOVITEX GOVERNMENT SOLUTIONS, LLC  
as a Subsidiary Guarantor

By: /s/ Parrie Ahammer

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Name: Parrie Ahammer

Title: Manager

*[Signature Page to Indenture]*

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U.S. BANK NATIONAL ASSOCIATION,  
not in its individual capacity, but solely as Trustee

By: /s/ Joshua A. Hahn  
Name: Joshua A. Hahn  
Title: Vice President

*[Signature Page to Indenture]*

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## PROVISIONS RELATING TO INITIAL NOTES AND ADDITIONAL NOTES

## 1. Definitions.

## 1.1 Definitions.

For the purposes of this Appendix A the following terms shall have the meanings indicated below:

“Definitive Note” means a certificated Initial Note or Additional Note (bearing the Restricted Notes Legend if the transfer of such Note is restricted by applicable law) that does not include the Global Notes Legend.

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Global Notes Legend” means the legend set forth under that caption in the applicable Exhibit to this Indenture.

“IAI” means an institutional “accredited investor” as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

“Notes Custodian” means the custodian with respect to a Global Note (as appointed by the Depository) or any successor Person thereto, who shall initially be the Trustee.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Regulation S” means Regulation S under the Securities Act.

“Regulation S Notes” means all Initial Notes offered and sold outside the United States in reliance on Regulation S.

“Restricted Notes Legend” means the legend set forth in Section 2.2(f)(i) herein.

“Restricted Period,” with respect to any Notes, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Notes are first offered to Persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S, notice of which day shall be promptly given by the Issuers to the Trustee, and (b) the Issue Date, and with respect to any Additional Notes that are Transfer Restricted Notes, it means the comparable period of 40 consecutive days.

“Rule 501” means Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

“Rule 144A” means Rule 144A under the Securities Act.

144A. “Rule 144A Notes” means all Initial Notes initially offered and sold to QIBs in reliance on Rule 144A.

“Transfer Restricted Definitive Notes” means Definitive Notes that bear or are required to bear or are subject to the Restricted Notes Legend.

“Transfer Restricted Global Notes” means Global Notes that bear or are required to bear or are subject to the Restricted Notes Legend.

“Transfer Restricted Notes” means the Transfer Restricted Definitive Notes and Transfer Restricted Global Notes.

“Unrestricted Definitive Notes” means Definitive Notes that are not required to bear, or are not subject to, the Restricted Notes Legend.

“Unrestricted Global Notes” means Global Notes that are not required to bear, or are not subject to, the Restricted Notes Legend.

## 1.2 Other Definitions.

	<b>Term:</b>	<b>Defined in Section:</b>
Agent Members		2.1(b)
Global Notes		2.1(b)
Regulation S Global Notes		2.1(b)
Regulation S Permanent Global Note		2.1(b)
Regulation S Temporary Global Note		2.1(b)
Rule 144A Global Notes		2.1(b)

## 2. The Notes.

### 2.1 Form and Dating; Global Notes.

(a) The Initial Notes issued on the date hereof will be (i) privately placed by the Issuers pursuant to the Offering Memorandum and (ii) sold, initially only to (1) QIBs in reliance on Rule 144A and (2) Persons other than U.S. Persons (as defined in Regulation S) in reliance on Regulation S. Such Initial Notes may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and, except as set forth below, IAIs in accordance with Rule 501. One or more Rule 144A Notes may be issued with a separate CUSIP number for purposes of transfers of Notes to IAIs in accordance with Rule 501. Additional Notes offered after the date hereof may be offered and sold by the Issuers from time to time pursuant to one or more agreements in accordance with applicable law.

(b) Global Notes. (i) Except as provided in clause (d) of Section 2.2 below, Rule 144A Notes initially shall be represented by one or more Notes in definitive, fully registered, global form without interest coupons (collectively, the “Rule 144A Global Notes”).

Regulation S Notes initially shall be represented by one or more Notes in fully registered, global form without interest coupons (collectively, the “Regulation S Temporary Global Note” and, together with the Regulation S Permanent Global Note (defined below), the “Regulation S Global Notes”), which shall be registered in the name of the Depository or the nominee of the Depository for the accounts of designated agents holding on behalf of Euroclear Bank S.A./N.V., as operator of the Euroclear system (“Euroclear”) or Clearstream Banking, *société anonyme* (“Clearstream”).

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in a permanent Global Note (the “Regulation S Permanent Global Note”) pursuant to the applicable procedures of the Depository. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

The provisions of the “Operating Procedures of the Euroclear System” and “Terms and Conditions Governing Use of Euroclear” and the “General Terms and Conditions of Clearstream Banking” and “Customer Handbook” of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Note that are held by participants through Euroclear or Clearstream.

The term “Global Notes” means the Rule 144A Global Notes and the Regulation S Global Notes. The Global Notes shall bear the Global Note Legend. The Global Notes initially shall (i) be registered in the name of the Depository or the nominee of such Depository, in each case for credit to an account of an Agent Member, (ii) be delivered to the Trustee as custodian for such Depository and (iii) bear the Restricted Notes Legend.

Members of, or direct or indirect participants in, the Depository (collectively, the “Agent Members”) shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Notes. The Depository may be treated by the Issuers, the Trustee and any agent of the Issuers or the Trustee as the absolute owner of the Global Notes for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository, or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Note.

(ii) Transfers of Global Notes shall be limited to transfer in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Notes may be transferred or exchanged for Definitive

Notes only in accordance with the applicable rules and procedures of the Depository and the provisions of Section 2.2. In addition, a Global Note shall be exchangeable for Definitive Notes if (x) the Depository (1) notifies the Issuers that it is unwilling or unable to continue as depository for such Global Note and the Issuers thereupon fails to appoint a successor depository or (2) has ceased to be a clearing agency registered under the Exchange Act or (y) there shall have occurred and be continuing an Event of Default with respect to such Global Note and a request has been made for such exchange; *provided* that in no event shall the Regulation S Temporary Global Note be exchanged by the Issuers for Definitive Notes prior to (x) the expiration of the Restricted Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act. In all cases, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository in accordance with its customary procedures.

(iii) In connection with the transfer of a Global Note as an entirety to beneficial owners pursuant to subsection (i) of this Section 2.1(b), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuers shall execute, and, upon written order of each Issuer signed by an Officer, the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations.

(iv) Any Transfer Restricted Note delivered in exchange for an interest in a Global Note pursuant to Section 2.2 shall, except as otherwise provided in Section 2.2, bear the Restricted Notes Legend.

(v) Notwithstanding the foregoing, through the Restricted Period, a beneficial interest in a Regulation S Global Note may be held only through Euroclear or Clearstream unless delivery is made in accordance with the applicable provisions of Section 2.2.

(vi) The holder of any Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Notes.

## 2.2 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. A Global Note may not be transferred as a whole except as set forth in Section 2.1(b). Global Notes will not be exchanged by the Issuers for Definitive Notes except under the circumstances described in Section 2.1(b)(ii). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.08 of this Indenture. Beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.2(b).

(b) Transfer and Exchange of Beneficial Interests in Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository, in accordance with the provisions of this Indenture and the applicable rules and procedures of the Depository. Beneficial interests in Transfer Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Beneficial interests in Global Notes shall be transferred or exchanged only for beneficial interests in Global Notes. Transfers and exchanges of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Transfer Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Transfer Restricted Global Note in accordance with the transfer restrictions set forth in the Restricted Notes Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in a Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person. A beneficial interest in an Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.2(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests in any Global Note that is not subject to Section 2.2(b)(i), the transferor of such beneficial interest must deliver to the Registrar (1) a written order from an Agent Member given to the Depository in accordance with the applicable rules and procedures of the Depository directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the applicable rules and procedures of the Depository containing information regarding the Agent Member account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note pursuant to Section 2.2(i).

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in a Transfer Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Transfer Restricted Global Note if the transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:



(A) if the transferee will take delivery in the form of a beneficial interest in a Rule 144A Global Note, then the transferor must deliver a certificate in the form attached to the applicable Note; and

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Note, then the transferor must deliver a certificate in the form attached to the applicable Note.

(iv) **Transfer and Exchange of Beneficial Interests in a Transfer Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.** A beneficial interest in a Transfer Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Transfer Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note; or

(B) if the holder of such beneficial interest in a Transfer Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note,

and, in each such case, if the Issuers or the Registrar so request or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Issuers and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Notes Legend are no longer required in order to maintain compliance with the Securities Act. If any such transfer or exchange is effected pursuant to this subparagraph (iv) at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an written order of the Issuers in the form of an Officer's Certificate in accordance with Section 2.01, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to this subparagraph (iv).

(v) Transfer and Exchange of Beneficial Interests in an Unrestricted Global Note for Beneficial Interests in a Transfer Restricted Global Note. Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Note.

(c) Transfer and Exchange of Beneficial Interests in Global Notes for Definitive Notes. A beneficial interest in a Global Note may not be exchanged for a Definitive Note except under the circumstances described in Section 2.1(b)(ii). A beneficial interest in a Global Note may not be transferred to a Person who takes delivery thereof in the form of a Definitive Note except under the circumstances described in Section 2.1(b)(ii). In any case, beneficial interests in Global Notes shall be transferred or exchanged only for Definitive Notes.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests in Global Notes. Transfers and exchanges of Definitive Notes for beneficial interests in the Global Notes also shall require compliance with either subparagraph (i), (ii) or (iii) below, as applicable:

(i) Transfer Restricted Definitive Notes to Beneficial Interests in Transfer Restricted Global Notes. If any holder of a Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Definitive Note for a beneficial interest in a Transfer Restricted Global Note or to transfer such Transfer Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Transfer Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Note for a beneficial interest in a Transfer Restricted Global Note, a certificate from such holder in the form attached to the applicable Note;

(B) if such Transfer Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate from such holder in the form attached to the applicable Note;

(C) if such Transfer Restricted Definitive Note is being transferred to a non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate from such holder in the form attached to the applicable Note;

(D) if such Transfer Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate from such holder in the form attached to the applicable Note;

(E) if such Transfer Restricted Definitive Note is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate from such holder in the form attached to the applicable Note, including the certifications, certificates and Opinion of Counsel, if applicable; or

(F) if such Transfer Restricted Definitive Note is being transferred to the Company or a Subsidiary thereof, a certificate from such holder in the form attached to the applicable Note;

the Trustee shall cancel the Transfer Restricted Definitive Note, and increase or cause to be increased the aggregate principal amount of the appropriate Transfer Restricted Global Note.

(ii) Transfer Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A holder of a Transfer Restricted Definitive Note may exchange such Transfer Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note or transfer such Transfer Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

(A) if the holder of such Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note; or

(B) if the holder of such Transfer Restricted Definitive Notes proposes to transfer such Transfer Restricted Definitive Note to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note,

and, in each such case, if the Issuers or the Registrar so request or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Issuers and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Notes Legend are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of this subparagraph (ii), the Trustee shall cancel the Transfer Restricted Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note. If any such transfer or exchange is effected pursuant to this subparagraph (ii) at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an written order of the Company in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of Transfer Restricted Notes transferred or exchanged pursuant to this subparagraph (ii).

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A holder of an Unrestricted Definitive Note may exchange such Unrestricted Definitive Note for a beneficial interest in an Unrestricted Global Note or transfer such Unrestricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or

transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes. If any such transfer or exchange is effected pursuant to this subparagraph (iii) at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of a written order of the Company in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of Unrestricted Definitive Notes transferred or exchanged pursuant to this subparagraph (iii).

(iv) Unrestricted Definitive Notes to Beneficial Interests in Transfer Restricted Global Notes. An Unrestricted Definitive Note cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Note.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a holder of Definitive Notes and such holder's compliance with the provisions of this Section 2.2(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such holder or by its attorney, duly authorized in writing. In addition, the requesting holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.2(e).

(i) Transfer Restricted Definitive Notes to Transfer Restricted Definitive Notes. A Transfer Restricted Note may be transferred to and registered in the name of a Person who takes delivery thereof in the form of a Transfer Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Note;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Note;

(C) if the transfer will be made pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate in the form attached to the applicable Note;

(D) if the transfer will be made to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (A) through (D) above, a certificate in the form attached to the applicable Note; and

(E) if such transfer will be made to the Company or a Subsidiary thereof, a certificate in the form attached to the applicable Note.

(ii) Transfer Restricted Definitive Notes to Unrestricted Definitive Notes. Any Transfer Restricted Definitive Note may be exchanged by the holder thereof for an Unrestricted Definitive Note or transferred to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(A) if the holder of such Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Definitive Note for an Unrestricted Definitive Note, a certificate from such holder in the form attached to the applicable Note; or

(B) if the holder of such Transfer Restricted Definitive Note proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form attached to the applicable Note,

and, in each such case, if the Issuers or the Registrar so request, an Opinion of Counsel in form reasonably acceptable to the Issuers and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Notes Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A holder of an Unrestricted Definitive Note may transfer such Unrestricted Definitive Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note at any time. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the holder thereof.

(iv) Unrestricted Definitive Notes to Transfer Restricted Definitive Notes. An Unrestricted Definitive Note cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a Transfer Restricted Definitive Note.

At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to

reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(f) Legend.

(i) Except as permitted by the following paragraph (iii), (iv) or (v), each Note certificate evidencing the Global Notes and any Definitive Notes (and all Notes issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE, IN A MINIMUM OF \$100,000 PRINCIPAL AMOUNT OF THE SECURITIES OR (C) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATIONS UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT WITHIN [IN THE CASE OF RULE 144A NOTES: ONE YEAR] [IN THE CASE OF REGULATIONS NOTES: 40 DAYS] AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUERS OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE, IN A

MINIMUM OF \$100,000 PRINCIPAL AMOUNT OF THE SECURITIES, (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR RULE 904 UNDER THE SECURITIES ACT, (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUERS SO REQUEST), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS “OFFSHORE TRANSACTION,” “UNITED STATES” AND “U.S. PERSON” HAVE THE MEANING GIVEN TO THEM BY REGULATIONS UNDER THE SECURITIES ACT.”

“THE TERMS OF THIS SECURITY ARE SUBJECT TO THE TERMS OF THE PARI FIRST LIEN INTERCREDITOR AGREEMENT AMONG WILMINGTON SAVINGS FUND SOCIETY, FSB, AS COLLATERAL AGENT AND ADMINISTRATIVE AGENT, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS INITIAL OTHER AUTHORIZED REPRESENTATIVE, AND THE OTHER PARTIES FROM TIME TO TIME PARTY THERETO, DATED AS OF JULY 12, 2017, AS IT MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME IN ACCORDANCE WITH THE INDENTURE.”

Each Regulation S Note shall bear the following additional legend:

“BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON, NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON, AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT.”

Each Definitive Note shall bear the following additional legend:

“IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.”

(ii) Upon any sale or transfer of a Transfer Restricted Definitive Note, the Registrar shall permit the holder thereof to exchange such Transfer Restricted Note for a Definitive Note that does not bear the legends set forth above and rescind any restriction on the transfer of such Transfer Restricted Definitive Note if the holder certifies in writing to the Registrar that its request for such exchange was made in reliance on

Rule 144 (such certification to be in the form set forth on the reverse of the Initial Note).

(iii) Upon a sale or transfer after the expiration of the Restricted Period of any Initial Note acquired pursuant to Regulation S, all requirements that such Initial Note bear the Restricted Notes Legend shall cease to apply and the requirements requiring any such Initial Note be issued in global form shall continue to apply.

(iv) Any Additional Notes sold in a registered offering shall not be required to bear the Restricted Notes Legend (other than the portion thereof relating to the First Lien Intercreditor Agreement).

(g) Cancellation or Adjustment of Global Note. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.10 of this Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(h) Obligations with Respect to Transfers and Exchanges of Notes.

(i) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate, Definitive Notes and Global Notes at the Registrar's request.

(ii) No service charge shall be made for any registration of transfer or exchange of Notes, but the Issuers may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments



or similar governmental charge payable upon exchanges pursuant to Sections 3.08, 4.06, 4.08 and 9.04 of this Indenture).

(iii) Prior to the due presentation for registration of transfer of any Note, the Issuers, the Trustee, a Paying Agent or the Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuers, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in the Depository or any other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the holders and all payments to be made to the holders under the Notes shall be given or made only to the registered holders (which shall be the Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depository participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

**[FORM OF FACE OF INITIAL NOTE]****[Global Notes Legend]**

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

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

**[Restricted Notes Legend]**

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE, IN A MINIMUM OF \$100,000 PRINCIPAL AMOUNT OF THE SECURITIES OR (C) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT WITHIN [IN THE CASE OF RULE 144A NOTES: ONE YEAR] [IN THE CASE OF REGULATION S NOTES: 40 DAYS] AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUERS OR ANY SUBSIDIARY THEREOF, (B)

INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE, IN A MINIMUM OF \$100,000 PRINCIPAL AMOUNT OF THE SECURITIES, (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR RULE 904 UNDER THE SECURITIES ACT, (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUERS SO REQUEST), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS “OFFSHORE TRANSACTION,” “UNITED STATES” AND “U.S. PERSON” HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

THE TERMS OF THIS SECURITY ARE SUBJECT TO THE TERMS OF THE PARI FIRST LIEN INTERCREDITOR AGREEMENT AMONG WILMINGTON SAVINGS FUND SOCIETY, FSB, AS COLLATERAL AGENT AND ADMINISTRATIVE AGENT, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS INITIAL OTHER AUTHORIZED REPRESENTATIVE, AND THE OTHER PARTIES FROM TIME TO TIME PARTY THERETO, DATED AS OF JULY 12, 2017, AS IT MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME IN ACCORDANCE WITH THE INDENTURE.

**[Restricted Notes Legend for Notes Offered in Reliance on Regulation S]**

BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON, NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON, AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.

[FORM OF INITIAL NOTE]

EXELA INTERMEDIATE LLC

EXELA FINANCE INC.

No. [ ]

RULE 144A CUSIP No. [ ]

RULE 144A ISIN No. [ ]

REGULATION S CUSIP No. [ ]

REGULATION S ISIN No. [ ]

[\$ ]

**11.500% FIRST-PRIORITY SENIOR SECURED NOTE DUE 2026**

Exela Intermediate LLC, a Delaware limited liability company (together with its successors and assigns under the Indenture (as defined on the reverse hereof)), and Exela Finance Inc., a Delaware corporation (together with its successors and assigns under the Indenture), promise to pay to [Cede & Co.], or registered assigns, the principal sum of [ ] Dollars (\$[ ]), as revised by the Schedule of Increases or Decreases in Global Note attached hereto, on the earlier of (i) July 15, 2026 and (ii) July 12, 2023 if, on such date, any amount of the Old Notes or the Old Term Loans remains outstanding.

Interest Payment Dates: January 15 and July 15, commencing [ ].<sup>1</sup>

Record Dates: January 1 and July 1.

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

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<sup>1</sup> To be July 15, 2022 for Notes issued on December 9, 2021.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed.

EXELA INTERMEDIATE LLC

By: \_\_\_\_\_  
Name:  
Title:

EXELA FINANCE INC.

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_, 2021

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION, as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_, 2021

11.500% FIRST-PRIORITY SENIOR SECURED NOTE DUE 2026

1. Interest

EXELA INTERMEDIATE LLC, a Delaware limited liability company (such entity, and its successors and assigns under the Indenture hereinafter referred to, the “Company”), and EXELA FINANCE INC., a Delaware corporation (such entity, and its successors and assigns under the Indenture hereinafter referred to, the “Co-Issuer” and, together with the Company, the “Issuers”), jointly and severally, promise to pay interest on the principal amount of this Note at the rate per annum shown above. The Issuers shall pay interest semiannually on January 15 and July 15 of each year (each, an “Interest Payment Date”), commencing [ ]<sup>2</sup>. Interest on the Notes shall accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from December 9, 2021, until the principal hereof is due. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Issuers shall pay interest on overdue principal at the rate borne by the Notes and shall pay interest on overdue installments of interest at the same rate to the extent lawful.

2. Method of Payment

The Issuers shall pay interest on the Notes (except defaulted interest) to the Persons who are registered holders at the close of business on January 1 or July 1 (each, a “Record Date”) immediately preceding the related Interest Payment Date even if Notes are canceled after the Record Date and on or before the related Interest Payment Date (whether or not a Business Day). Holders must surrender Notes to the Paying Agent to collect principal payments. The Issuers shall pay principal, premium, if any, and interest in money of the United States of America that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Notes represented by a Global Note (including principal, premium, if any, and interest) shall be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company or any successor depository. The Issuers shall make all payments in respect of a certificated Note (including principal, premium, if any, and interest) at the office of the Paying Agent, except that, at the option of the Issuers, payment of interest may be made by mailing a check to the registered address of each holder thereof; *provided, however*, that payments on the Notes may also be made, in the case of a holder of at least \$1,000,000 aggregate principal amount of the Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States of America if such holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the related Interest Payment Date (or such other date as the Trustee may accept in its discretion).

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<sup>2</sup> To be July 15, 2022 for Notes issued on December 9, 2021.

3. Paying Agent and Registrar

Initially, U.S. Bank National Association, as trustee under the Indenture (the “Trustee”), will act as Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent or Registrar upon written notice to such Paying Agent or Registrar and to the Trustee. The Issuers or any of its domestically incorporated Subsidiaries may act as Paying Agent or Registrar.

4. Indenture

The Issuers issued the Notes under the indenture, dated as of December 9, 2021 (as amended, supplemented or otherwise modified from time to time, the “Indenture”), by and among the Issuers, the Subsidiary Guarantors party thereto from time to time and the Trustee. Capitalized terms used and not otherwise defined herein have the respective meanings ascribed to such terms in the Indenture, unless otherwise indicated. The terms of the Notes include those stated in the Indenture. The Notes are subject to all terms and provisions of the Indenture, and the holders (as defined in the Indenture) are referred to the Indenture for a statement of such terms and provisions. If and to the extent that any term or provision of the Notes limits, qualifies or conflicts with a term or provision of the Indenture, such term or provision of the Indenture shall control.

The Notes are senior secured obligations of the Issuers. This Note is one of the Initial Notes referred to in the Indenture. The Notes include the Initial Notes and any Additional Notes. The Initial Notes and any Additional Notes are treated as a single class of securities under the Indenture. The Indenture imposes certain limitations on the ability of the Company and its Restricted Subsidiaries to, among other things, make certain Investments and other Restricted Payments, pay dividends and other distributions, Incur Indebtedness, enter into consensual restrictions upon the payment of certain dividends and distributions by such Restricted Subsidiaries, issue or sell shares of capital stock of such Restricted Subsidiaries, enter into or permit certain transactions with Affiliates, create or Incur Liens and make Asset Sales.

The Indenture also imposes limitations on the ability of the Company, the Co-Issuer and each Subsidiary Guarantor to consolidate or merge with or into any other Person or convey, transfer or lease all or substantially all of its property.

To guarantee the due and punctual payment of the principal and interest on the Notes and all other amounts payable by the Issuers under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, any Subsidiary Guarantor that executes a Subsidiary Guarantee will unconditionally guarantee the Guaranteed Obligations on a senior secured basis pursuant to the terms of the Indenture.

5. Redemption

On or after December 1, 2022, the Issuers may redeem the Notes at their option, in whole at any time or in part from time to time, upon not less than 30 nor more than 60 days’ prior notice mailed by the Issuers by first-class mail to each holder’s registered address, or delivered electronically if held by DTC, at a redemption price (expressed as a percentage of



principal amount) of 100.0%, *plus* accrued and unpaid interest, if any, to, but excluding, the redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

In addition, prior to December 1, 2022, the Issuers may redeem the Notes at their option, in whole at any time or in part from time to time, upon not less than 30 nor more than 60 days' prior notice mailed by the Issuers by first-class mail to each holder's registered address, or delivered electronically if held by DTC, at a redemption price equal to 100% of the principal amount of the Notes redeemed *plus* the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding, the applicable redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

Notwithstanding the foregoing, at any time and from time to time on or prior to December 1, 2022, the Issuers may redeem in the aggregate up to 40% of the original aggregate principal amount of the Notes (calculated after giving effect to any issuance of Additional Notes) in an amount equal to the amount of net cash proceeds of one or more Equity Offerings (1) by the Company or (2) by any direct or indirect parent of the Company to the extent the net cash proceeds thereof are contributed to the common equity capital of the Company or used to purchase Capital Stock (other than Disqualified Stock) of the Company, at a redemption price (expressed as a percentage of principal amount thereof) of 111.500%, *plus* accrued and unpaid interest, if any, to, but excluding, the redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date); *provided, however*, that at least 50% of the original aggregate principal amount of the Notes (calculated after giving effect to any issuance of Additional Notes) must remain outstanding after each such redemption; *provided, further*, that such redemption shall occur within 90 days after the date on which any such Equity Offering is consummated upon not less than 30 nor more than 60 days' notice mailed by the Issuers to each holder of Notes being redeemed, or delivered electronically if held by DTC, and otherwise in accordance with the procedures set forth in the Indenture.

Notice of any redemption upon any corporate transaction or other event (including any Equity Offering, incurrence of Indebtedness, Change of Control or other transaction) may be given prior to the completion thereof. In addition, any redemption described above or notice thereof may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a corporate transaction or other event. If any redemption is so subject to the satisfaction of one or more conditions precedent, the notice thereof shall describe each such condition and, if applicable, shall state that, in the Issuers' discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date as so delayed. In addition, the Issuers may provide in such notice that payment of the redemption price and performance of the Issuers' obligations with respect to such redemption may be performed by another Person.

6. Mandatory Redemption

The Issuers will not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

7. Notice of Redemption

Notices of redemption (other than notices of redemption in connection with the final paragraph of Paragraph 5 of this Note) will be mailed by first class mail at least 30 but not more than 60 days before the redemption date, to each holder of Notes to be redeemed at its registered address (with a copy to the Trustee) or otherwise delivered in accordance with the procedures of The Depository Trust Company ("DTC"), except that redemption notices may be mailed or otherwise delivered more than 60 days prior to the redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture pursuant to Article VIII thereof. If money sufficient to pay the redemption price of and accrued and unpaid interest on all Notes (or portions thereof) to be redeemed on the redemption date is deposited with a Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date, interest ceases to accrue on such Notes (or such portions thereof) called for redemption.

8. Repurchase of Notes at the Option of the Holders upon Change of Control and Asset Sales.

Upon the occurrence of a Change of Control, each holder shall have the right, subject to certain conditions specified in the Indenture, to cause the Issuers to repurchase all or any part of such holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof, *plus* accrued and unpaid interest, if any, to, but excluding, the date of repurchase (subject to the right of the holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date), as provided in, and subject to the terms of, the Indenture.

In accordance with Section 4.06 of the Indenture, the Issuers will be required to offer to purchase Notes upon the occurrence of certain events.

9. Ranking and Collateral.

The Notes and the Subsidiary Guarantees will be secured by first-priority security interest (subject to the Permitted Liens and Liens permitted by Section 4.12 of the Indenture) in the Collateral pursuant to the Security Documents (but subject to the terms and conditions of the Security Documents and the First Lien Intercreditor Agreement). The Liens upon any and all Collateral are, to the extent and in the manner provided in the First Lien Intercreditor Agreement, equal in ranking with all present and future Liens securing First-Priority Obligations and will be senior in ranking to all present and future Liens securing Junior Lien Obligations.

10. Denominations; Transfer; Exchange

The Notes are in registered form, without coupons, in minimum denominations of \$2,000 principal amount and integral multiples of \$1,000 in excess thereof. A holder shall register the transfer of or exchange of the Notes in accordance with the Indenture. Upon any

registration of transfer or exchange, the Registrar and the Trustee may require a holder, among other things, to furnish appropriate endorsements or transfer documents and the Issuers may require a holder to pay any taxes required by law or permitted by the Indenture. The Issuers shall not be required to make, and the Registrar need not register, the transfer or exchange of any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or the transfer or exchange of any Notes for a period of 15 days before a selection of Notes to be redeemed or between the Record Date and the related Interest Payment Date.

11. Persons Deemed Owners

Except as provided in Paragraph 2 hereof, the registered holder of this Note shall be treated as the owner of it for all purposes.

12. Unclaimed Money

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Issuers upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, holders entitled to the money must look to the Issuers for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

13. Discharge and Defeasance

Subject to certain conditions, the Issuers at any time may terminate some of or all its obligations under the Notes and the Indenture if the Issuers deposit with the Trustee money or U.S. Government Obligations for the payment of principal of and premium (if any) and interest on the Notes to redemption or maturity, as the case may be.

14. Amendment; Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and the First Lien Intercreditor Agreement may be amended with the consent of the holders of at least a majority in principal amount of the Notes then outstanding and (ii) any past default or compliance with any provisions of the Indenture may be waived with the consent of the holders of at least a majority in principal amount of the Notes then outstanding.

Subject to certain exceptions set forth in the Indenture, without notice to or the consent of any holder, the Issuers, the First-Priority Collateral Agent and the Trustee may amend the Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and/or the First Lien Intercreditor Agreement (i) to cure any ambiguity, omission, mistake, defect or inconsistency; (ii) to provide for the assumption by a Successor Company (with respect to the Company) of the obligations of the Company under the Indenture, the Notes, the Security Documents and the First Lien Intercreditor Agreement or to provide for the assumption by a Successor Co-Issuer (with respect to the Co-Issuer) of the obligations of the Co-Issuer under the Indenture, the Notes, the Security Documents and the First Lien Intercreditor Agreement; (iii) to provide for the assumption by a Successor Subsidiary Guarantor (with respect to any Subsidiary

Guarantor), as the case may be, of the obligations of a Subsidiary Guarantor under the Indenture, its Subsidiary Guarantee, the Security Documents and the First Lien Intercreditor Agreement; (iv) to provide for uncertificated Notes in addition to or in place of certificated Notes, provided, however, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code; (v) to conform the text of the Indenture, the Notes, the Subsidiary Guarantees, the Security Documents or the First Lien Intercreditor Agreement to any provision of the “Description of New Notes” in the Offering Memorandum to the extent that such provision in the Indenture, the Notes, the Subsidiary Guarantee, the Security Documents or the First Lien Intercreditor Agreement, as applicable, was intended by the Issuers to be a verbatim recitation of a provision in the “Description of New Notes” in the Offering Memorandum, as stated in an Officer’s Certificate; (vi) to add a Subsidiary Guarantee or collateral with respect to the Notes, (vii) to release or subordinate Collateral as permitted by the Indenture, the Security Documents or the First Lien Intercreditor Agreement; (viii) to add additional secured creditors holding other First-Priority Obligations or Junior Lien Obligations so long as such obligations are not prohibited by the Indenture; (ix) to comply with any requirement of the SEC in connection with qualifying or maintaining the qualification of the Indenture under the TIA (if the Issuers elect to qualify the Indenture under the TIA); (x) to add to the covenants of the Issuers for the benefit of the holders or to surrender any right or power herein conferred upon the Issuers; (xi) to make any change that does not adversely affect the rights of any holder in any material respect; or (xii) to make changes to provide for the issuance of Additional Notes, which shall have terms substantially identical in all material respects to the Initial Notes, and which shall be treated, together with any outstanding Initial Notes, as a single issue of securities.

In addition, the First Lien Intercreditor Agreement may be amended without notice to or the consent of any holder, the Trustee or the First-Priority Collateral Agent in connection with the permitted entry into the First Lien Intercreditor Agreement of any class of additional secured creditors holding Other First-Priority Obligations.

#### 15. Defaults and Remedies

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Company) occurs and is continuing, the Trustee by notice to the Issuers or the holders of at least 30% in aggregate principal amount of outstanding Notes by notice to the Issuers, with a copy to the Trustee, may declare the principal of, premium, if any, and accrued but unpaid interest on all the Notes to be due and payable.

Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Company occurs, the principal of, premium, if any, and interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any holders. Under certain circumstances, the holders of a majority in principal amount of outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

If an Event of Default occurs and is continuing, the Trustee shall be under no obligation to exercise any of the rights or powers under the Indenture or the Security Documents

at the request or direction of any of the holders unless such holders have offered and, if requested, provided to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense and certain other conditions are complied with. Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no holder may pursue any remedy with respect to the Indenture or the Notes unless (i) such holder has previously given the Trustee notice that an Event of Default is continuing, (ii) holders of at least 30% in aggregate principal amount of the outstanding Notes have requested the Trustee to pursue the remedy, (iii) such holders have offered and, if requested, provided to the Trustee security or indemnity satisfactory to it against any loss, liability or expense, (iv) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity, and (v) the holders of a majority in principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period. Subject to certain restrictions, the holders of a majority in principal amount of outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee shall be entitled to indemnification satisfactory to it against all losses and expenses caused by taking or not taking such action.

16. Trustee Dealings with the Issuers

The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of the Notes and may otherwise deal with and collect obligations owed to it by the Issuers or their respective Affiliates and may otherwise deal with the Issuers or their respective Affiliates with the same rights it would have if it were not Trustee.

17. No Recourse Against Others

No director, officer, employee, manager, incorporator or holder of any Equity Interests in an Issuer or any direct or indirect parent companies, as such, will have any liability for any obligations of an Issuer or any Subsidiary Guarantor under the Notes, the Indenture or the Subsidiary Guarantees, as applicable, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of the Notes by accepting a Note waives and releases all such liability.

18. Authentication

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Note.

19. Abbreviations

Customary abbreviations may be used in the name of a holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint

tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

20. Governing Law

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

21. CUSIP Numbers; ISINs

The Issuers have caused CUSIP numbers and ISINs to be printed on the Notes and have directed the Trustee to use CUSIP numbers and ISINs in notices of redemption as a convenience to the holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

**The Issuers will furnish to any holder of the Notes upon written request and without charge to the holder a copy of the Indenture which has in it the text of this Note.**

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to:

\_\_\_\_\_  
(Print or type assignee's name, address and zip code)

\_\_\_\_\_  
(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_ as agent to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

\_\_\_\_\_  
Sign exactly as your name appears on the other side of this Note.

Signature Guarantee:

Date: _____	_____
Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee	Signature of Signature Guarantee



CERTIFICATE TO BE DELIVERED  
UPON EXCHANGE OR REGISTRATION OF TRANSFER  
RESTRICTED NOTES

RULE 144A CUSIP No. [    ]

RULE 144A ISIN No. [    ]

REGULATION S CUSIP No. [    ]

REGULATION S ISIN No. [    ]

This certificate relates to \$\_\_\_ principal amount of Notes held in (check applicable space) book-entry or \_\_\_\_\_  
\_definitive form by the undersigned.

The undersigned (check one box below):

- has requested the Trustee by written order to deliver in exchange for its beneficial interest in the Global Note held by the Depository a Note or Notes in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Note (or the portion thereof indicated above);
- has requested the Trustee by written order to exchange or register the transfer of a Note or Notes.

In connection with any transfer of any of the Notes evidenced by this certificate occurring while this Note is still a Transfer Restricted Definitive Note or a Transfer Restricted Global Note, the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

(1)	<input type="checkbox"/>	to the Issuers; or
(2)	<input type="checkbox"/>	to the Registrar for registration in the name of the holder, without transfer; or
(3)	<input type="checkbox"/>	pursuant to an effective registration statement under the Securities Act of 1933, as amended (the " <u>Securities Act</u> "); or
(4)	<input type="checkbox"/>	inside the United States to a " <u>qualified institutional buyer</u> " (as defined in Rule 144A under the Securities Act) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act; or



(5)	0	outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act and such Note shall be held immediately after the transfer through Euroclear or Clearstream until the expiration of the Restricted Period (as defined in the Indenture); or
(6)	0	to an institutional “ <u>accredited investor</u> ” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) that has furnished to the Trustee a signed letter containing certain representations and agreements in the form of Exhibit B to the Indenture; or
(7)	0	pursuant to another available exemption from registration provided by Rule 144 under the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; *provided, however*, that if box (5), (6) or (7) is checked, the Issuers or the Trustee may require, prior to registering any such transfer of the Notes, such legal opinions, certifications and other information as the Issuers or the Trustee have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

Sign exactly as your name appears on the other side of this Note.

Signature Guarantee:

Date: \_\_\_\_\_

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

Signature of Signature Guarantee

TO BE COMPLETED BY PURCHASER IF BOX (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: To be executed by an executive officer

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The initial principal amount of this Global Note is \$ \_\_\_\_\_. The following increases or decreases in this Global Note have been made:

<b>Date of Exchange</b>	<b>Amount of Decrease in Principal Amount of this Global Note</b>	<b>Amount of Increase in Principal Amount of this Global Note</b>	<b>Principal Amount of this Global Note Following Such Increase or Decrease</b>	<b>Signature of Authorized Signatory of Trustee or Notes Custodian</b>
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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.06 (*Asset Sales*) or 4.08 (*Change of Control*) of the Indenture, check the box:

Asset Sale  Change of Control

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 4.06 (*Asset Sales*) or 4.08 (*Change of Control*) of the Indenture, state the amount (minimum of \$2,000 or any integral multiple of \$1,000 in excess thereof):

\$

Date: _____	Your Signature: _____ (Sign exactly as your name appears on the other side of this note)
-------------	---

Signature Guarantee: \_\_\_\_\_

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

**EXHIBIT B**

**[FORM OF TRANSFEREE LETTER OF REPRESENTATION]**

**TRANSFEREE LETTER OF REPRESENTATION**

EXELA INTERMEDIATE LLC  
EXELA FINANCE INC.  
2701 East Grauwyler Road  
Irving, Texas 75061

c/o U.S. Bank National Association  
West Side Flats  
60 Livingston Ave.  
St. Paul, MN 55107  
Attention: Administrator — Exela Intermediate LLC

Ladies and Gentlemen:

This certificate is delivered to request a transfer of \$[ ] principal amount of the 11.500% First-Priority Senior Secured Notes due 2026 (the “Notes”) of EXELA INTERMEDIATE LLC and EXELA FINANCE INC. (collectively, with their successors and assigns, the “Issuers”).

Upon transfer, the Notes will be registered in the name of the new beneficial owner as follows:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer ID Number: \_\_\_\_\_

The undersigned represents and warrants to you that:

1. We are an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the “Securities Act”), purchasing for our own account or for the account of such an institutional “accredited investor” at least \$100,000 principal amount of the Notes, and we are acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we invest in or purchase securities similar to the Notes in the normal course of our business. We, and any accounts for which we are acting, are each able to bear the economic risk of our or its investment in the Notes.

2. We understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are

purchasing the Notes to offer, sell or otherwise transfer the Notes prior to the date that is one year after the later of the date of original issue and the last date on which either the Issuers or any affiliate of the Issuers was the owner of such Notes (or any predecessor thereto) (the “Resale Restriction Termination Date”) only (a) in the United States to a person whom we reasonably believe is a “qualified institutional buyer” (as defined in rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (b) outside the United States in an offshore transaction in accordance with Rule 904 of Regulation S under the Securities Act, (c) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if applicable) or (d) pursuant to an effective registration statement under the Securities Act, in each of cases (a) through (d), in accordance with any applicable securities laws of any state of the United States. In addition, we will, and each subsequent holder is required to, notify any purchaser of the Note evidenced hereby of the resale restrictions set forth above. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made to an institutional “accredited investor” prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuers and the Trustee, which shall provide, among other things, that the transferee is an institutional “accredited investor” within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuers and the Trustee reserve the right prior to the offer, sale or other transfer prior to the Resale Restriction Termination Date of the Notes pursuant to clause (b), (c) or (d) above to require the delivery of an opinion of counsel, certifications or other information satisfactory to the Issuers and the Trustee.

Dated: \_\_\_\_\_

TRANSFeree: \_\_\_\_\_

By: \_\_\_\_\_

## FORM OF SUPPLEMENTAL INDENTURE

THIS SUPPLEMENTAL INDENTURE, dated as of [ ] (this “Supplemental Indenture”), by and among [SUBSIDIARY GUARANTOR] (the “New Subsidiary Guarantor”), a subsidiary of EXELA INTERMEDIATE LLC, a Delaware limited liability company (or its successor) (the “Company”), the Company, EXELA FINANCE INC., a Delaware corporation (the “Co-Issuer” and together with the Company, the “Issuers”), and U.S. BANK NATIONAL ASSOCIATION, as trustee under the indenture referred to below (the “Trustee”).

## W I T N E S S E T H :

WHEREAS, the Issuers, certain Subsidiary Guarantors and the Trustee have heretofore executed the indenture, dated as of December 9, 2021 (as amended, supplemented or otherwise modified from time to time, the “Indenture”), providing for the issuance of the Issuers’ 11.500% First-Priority Senior Secured Notes due 2026 (the “Notes”), initially in the aggregate principal amount of \$982,598,000;

WHEREAS, Sections 4.11 and 12.07 of the Indenture provide that, under certain circumstances, the Issuers are required to cause the New Subsidiary Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Subsidiary Guarantor shall unconditionally guarantee all of the Issuers’ Obligations under the Notes and the Indenture pursuant to a Subsidiary Guarantee on the terms and conditions set forth herein; and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Issuers and the Trustee are authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Subsidiary Guarantor, the Issuers and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of the Notes as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined, except that the term “holders” in this Supplemental Indenture shall refer to the term “holders” as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such holders. The words “herein,” “hereof” and “hereby” and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular Section hereof.

2. Agreement to Guarantee. The New Subsidiary Guarantor hereby agrees, jointly and severally with all existing Subsidiary Guarantors (if any), to unconditionally guarantee all of the Issuers’ Obligations under the Notes and the Indenture on the terms and subject to the conditions set forth in Article XII of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes and to perform all of the obligations and agreements of a Subsidiary Guarantor under the Indenture.

3. Notices. All notices or other communications to the New Subsidiary Guarantor shall be given as provided in Section 13.02 of the Indenture.

4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all of the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

5. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

6. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture or as to the statements made in the recitals.

7. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e., a “pdf” or “tif”) (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) shall be effective as delivery of a manually executed counterpart thereof.

8. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction thereof.

*[Remainder of Page Intentionally Left Blank]*



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

**EXELA INTERMEDIATE LLC, as Company**

By: \_\_\_\_\_  
Name:  
Title:

**EXELA FINANCE INC., as Co-Issuer**

By: \_\_\_\_\_  
Name:  
Title:

**[NEW SUBSIDIARY GUARANTOR], as a Subsidiary  
Guarantor**

By: \_\_\_\_\_  
Name:  
Title:

**U.S. BANK NATIONAL ASSOCIATION, not in its  
individual capacity, but solely as Trustee**

By: \_\_\_\_\_  
Name:  
Title:

## FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE, dated as of December 20, 2021 (this “First Supplemental Indenture”), by and among EXELA INTERMEDIATE LLC, a Delaware limited liability company (the “Company”), EXELA FINANCE INC., a Delaware corporation (the “Co-Issuer” and, together with the Company, the “Issuers”), and U.S. BANK NATIONAL ASSOCIATION, as trustee under the indenture referred to below (the “Trustee”). Capitalized terms used herein without definitions shall have the meaning assigned to them in the Indenture (as defined below).

## WITNESSETH:

WHEREAS, the Issuers, the Subsidiary Guarantors and the Trustee have heretofore executed the indenture, dated as of December 9, 2021 (as amended, supplemented or otherwise modified from time to time, the “Indenture”), providing for the issuance of the Issuers’ 11.500% First-Priority Senior Secured Notes due 2026 (the “Notes”), initially in the aggregate principal amount of \$982,598,000 (the “Existing Notes”);

WHEREAS, Section 2.01 of the Indenture provides that the Issuers may, from time to time, and in accordance therewith, issue additional Notes under the Indenture subject to the satisfaction of certain conditions set forth in the Indenture;

WHEREAS, on the date hereof, the Issuers intend to issue an aggregate principal amount of \$75,000,000 of the Notes (the “Additional Notes”);

WHEREAS, the Issuers have duly authorized the execution and delivery of this First Supplemental Indenture and the Additional Notes to be issued as provided in the Indenture;

WHEREAS, the Existing Notes and the Additional Notes will be treated as a single series of Notes for all purposes under the Indenture (as supplemented by this First Supplemental Indenture), including, among other things, waivers, amendments, redemptions and offers to purchase;

WHEREAS, pursuant to Sections 9.01 and 9.05 of the Indenture, the Trustee and the Issuers are authorized to execute and deliver this First Supplemental Indenture to provide for the issuance of the Additional Notes;

WHEREAS, the Issuers have complied with all of the conditions precedent and covenants provided for in the Indenture relating to the execution and delivery of this First Supplemental Indenture and the issuance of the Additional Notes; and

WHEREAS, the Issuers have requested that the Trustee execute and deliver this First Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuers and the Trustee mutually covenant and agree for the equal and ratable benefit of all holders of the Notes as follows:

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1. Terms of Additional Notes. The terms of the Additional Notes shall be identical to the Existing Notes issued on December 9, 2021, other than with respect to the following:

- (a) *Principal Amount.* The aggregate principal amount of the Additional Notes which may be authenticated and delivered under the Indenture, as supplemented by this First Supplemental Indenture, shall be \$75,000,000.
- (b) *Issue Price.* The issue price of the Additional Notes shall be 100% of the aggregate principal amount of the Additional Notes, plus accrued and unpaid interest from and including December 9, 2021.
- (c) *Issuance Date.* The issuance date of the Additional Notes shall be the date of this First Supplemental Indenture.
- (e) *Global Notes.* The Additional Notes shall be issuable in whole or in part in the form of one or more Global Notes. The depository for such Global Notes shall be The Depository Trust Company, a New York corporation.
- (f) *Additional Terms.* The Additional Notes shall have other terms set forth in the form of global notes attached hereto as Exhibit A.
- (g) *Issued Pursuant to Section 2.01.* The Additional Notes shall be issued pursuant to Section 2.01 of the Indenture.

2. Execution and Authentication of Additional Notes. The Additional Notes shall be executed on behalf of the Issuers by an Officer and authenticated by the Trustee pursuant to Section 2.03 of the Indenture.

3. Defined Terms. As used in this First Supplemental Indenture, terms defined in the Indenture or in the preamble or recital thereto are used herein as therein defined, except that the term “holders” in this First Supplemental Indenture shall refer to the term “holders” as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such holders. The words “herein,” “hereof” and “hereby” and other words of similar import used in this First Supplemental Indenture refer to this First Supplemental Indenture as a whole and not to any particular section hereof.

4. Notices. All notices or other communications to the Issuers shall be given as provided in Section 13.02 of the Indenture.

5. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all of the terms, conditions and provisions thereof shall remain in full force and effect. This First Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

6. Governing Law. **THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

7. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture or as to the statements made in the recitals.

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8. Counterparts. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this First Supplemental Indenture by telecopier, facsimile or other electronic transmission (*i.e.*, a “pdf” or “tif”) (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech §§ 301-309), as amended from time to time, or other applicable law) shall be effective as delivery of a manually executed counterpart thereof.

9. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction thereof.

*[Remainder of Page Intentionally Left Blank]*

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

**EXELA INTERMEDIATE LLC,**  
as Company

By: /s/ Erik Mengwall

Name: Erik Mengwall

Title: Secretary

**EXELA FINANCE INC.,**  
as Co-Issuer

By: /s/ Erik Mengwall

Name: Erik Mengwall

Title: Secretary

*[Signature Page to First Supplemental Indenture—Exela Technologies, Inc.]*

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**U.S. BANK NATIONAL ASSOCIATION,**  
not in its individual capacity, but solely as Trustee

By: /s/ Joshua A. Hahn

Name: Joshua A. Hahn

Title: Vice President

*[Signature Page to First Supplemental Indenture—Exela Technologies, Inc.]*

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**FORM OF ADDITIONAL NOTES**

*See attached.*

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## SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE, dated as of February 24, 2022 (this “Second Supplemental Indenture”), by and among EXELA INTERMEDIATE LLC, a Delaware limited liability company (the “Company”), EXELA FINANCE INC., a Delaware corporation (the “Co-Issuer” and, together with the Company, the “Issuers”), and U.S. BANK TRUST COMPANY NATIONAL ASSOCIATION as trustee (as the successor to U.S. Bank National Association as trustee under the indenture referred to below)(the “Trustee”). Capitalized terms used herein without definitions shall have the meaning assigned to them in the Indenture (as defined below).

## WITNESSETH:

WHEREAS, the Issuers, the Subsidiary Guarantors and U.S. Bank National Association, as trustee have heretofore executed the indenture, dated as of December 9, 2021, as amended by the first supplemental indenture, dated as of December 20, 2021 (as amended, supplemented or otherwise modified from time to time, the “Indenture”), providing for the issuance of the Issuers’ 11.500% First-Priority Senior Secured Notes due 2026 (the “Notes”), initially in the aggregate principal amount of \$982,598,000 (the “Existing Notes”);

WHEREAS, Section 2.01 of the Indenture provides that the Issuers may, from time to time, and in accordance therewith, issue additional Notes under the Indenture subject to the satisfaction of certain conditions set forth in the Indenture;

WHEREAS, on the date hereof, the Issuers intend to issue an aggregate principal amount of \$70,000,000 of the Notes (the “Additional Notes”);

WHEREAS, the Issuers have duly authorized the execution and delivery of this Second Supplemental Indenture and the Additional Notes to be issued as provided in the Indenture;

WHEREAS, the Existing Notes and the Additional Notes will be treated as a single series of Notes for all purposes under the Indenture (as supplemented by this Second Supplemental Indenture), including, among other things, waivers, amendments, redemptions and offers to purchase;

WHEREAS, pursuant to Sections 9.01 and 9.05 of the Indenture, the Trustee and the Issuers are authorized to execute and deliver this Second Supplemental Indenture to provide for the issuance of the Additional Notes;

WHEREAS, the Issuers have complied with all of the conditions precedent and covenants provided for in the Indenture relating to the execution and delivery of this Second Supplemental Indenture and the issuance of the Additional Notes; and

WHEREAS, the Issuers have requested that the Trustee execute and deliver this Second Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuers and the

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Trustee mutually covenant and agree for the equal and ratable benefit of all holders of the Notes as follows:

1. Terms of Additional Notes. The terms of the Additional Notes shall be identical to the Existing Notes issued on December 9, 2021, other than with respect to the following:

- (a) *Principal Amount.* The aggregate principal amount of the Additional Notes which may be authenticated and delivered under the Indenture, as supplemented by this Second Supplemental Indenture, shall be \$70,000,000.
- (b) *Issue Price.* The issue price of the Additional Notes shall be 100% of the aggregate principal amount of the Additional Notes, plus accrued and unpaid interest from and including December 9, 2021.
- (c) *Issuance Date.* The issuance date of the Additional Notes shall be the date of this Second Supplemental Indenture.
- (e) *Global Notes.* The Additional Notes shall be issuable in whole or in part in the form of one or more Global Notes. The depository for such Global Notes shall be The Depository Trust Company, a New York corporation.
- (f) *Additional Terms.* The Additional Notes shall have other terms set forth in the form of global notes attached hereto as Exhibit A.
- (g) *Issued Pursuant to Section 2.01.* The Additional Notes shall be issued pursuant to Section 2.01 of the Indenture.

2. Execution and Authentication of Additional Notes. The Additional Notes shall be executed on behalf of the Issuers by an Officer and authenticated by the Trustee pursuant to Section 2.03 of the Indenture.

3. Defined Terms. As used in this Second Supplemental Indenture, terms defined in the Indenture or in the preamble or recital thereto are used herein as therein defined, except that the term “holders” in this Second Supplemental Indenture shall refer to the term “holders” as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such holders. The words “herein,” “hereof” and “hereby” and other words of similar import used in this Second Supplemental Indenture refer to this Second Supplemental Indenture as a whole and not to any particular section hereof.

4. Notices. All notices or other communications to the Issuers shall be given as provided in Section 13.02 of the Indenture.

5. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all of the terms, conditions and provisions thereof shall remain in full force and effect. This Second Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

6. Governing Law. **THIS SECOND SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

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7. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Second Supplemental Indenture or as to the statements made in the recitals.

8. Counterparts. The parties may sign any number of copies of this Second Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Second Supplemental Indenture by telecopier, facsimile or other electronic transmission (*i.e.*, a “pdf” or “tif”) (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech §§ 301-309), as amended from time to time, or other applicable law) shall be effective as delivery of a manually executed counterpart thereof.

9. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction thereof.

*[Remainder of Page Intentionally Left Blank]*

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

**EXELA INTERMEDIATE LLC,**  
as Company

By: /s/ Erik Mengwall

Name: Erik Mengwall

Title: Secretary

**EXELA FINANCE INC.,**  
as Co-Issuer

By: /s/ Erik Mengwall

Name: Erik Mengwall

Title: Secretary

*[Signature Page to Second Supplemental Indenture—Exela Technologies, Inc.]*

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**U.S. BANK TRUST COMPANY NATIONAL  
ASSOCIATION,**  
not in its individual capacity, but solely as Trustee

By: /s/ Joshua A. Hahn  
Name: Joshua A. Hahn  
Title: Vice President

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*[Signature Page to Second Supplemental Indenture—Exela Technologies, Inc.]*

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**FORM OF ADDITIONAL NOTES**

*See attached.*

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**EXECUTION VERSION**

**FOURTH AMENDMENT TO FIRST LIEN CREDIT AGREEMENT**

This FOURTH AMENDMENT TO FIRST LIEN CREDIT AGREEMENT (this “**Agreement**”), dated as of December 9, 2021, and executed this 9<sup>th</sup> day of December, 2021, is made by and among EXELA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“**Holdings**”), EXELA INTERMEDIATE LLC, a Delaware limited liability company (the “**Borrower**”), and the Lenders party hereto (the “**Lenders**”).

PRELIMINARY STATEMENTS:

(1) Holdings, the Borrower, the Lenders party thereto from time to time and the Administrative Agent are party to that certain First Lien Credit Agreement, dated as of July 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the date hereof, the “**Existing Credit Agreement**” and as the same is amended or modified by this Agreement and as may be further amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time, the “**Credit Agreement**”).

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and subject to the conditions set forth herein, the parties hereto hereby agree as follows:

Section 1. Amendments to the Credit Agreement. Effective as of the date hereof, the Credit Agreement is hereby amended as set forth below:

(a) ARTICLE V of the Credit Agreement is hereby deleted and amended and restated to read in its entirety as set forth below:

“ARTICLE V  
AFFIRMATIVE COVENANTS

[Intentionally omitted]”;

(b) ARTICLE VI of the Credit Agreement is hereby deleted and amended and restated to read in its entirety as set forth below:

“ARTICLE VI  
NEGATIVE COVENANTS

[Intentionally omitted]”;

(c) Section 7.01 of the Credit Agreement is hereby deleted and amended and restated to read in its entirety as set forth below:

“SECTION 7.01 Events of Default. In case of the happening of any of the following events (“**Events of Default**”):

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(a) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise; or

(b) default shall be made in the payment of any interest on any Loan or the reimbursement with respect to any L/C Disbursement or in the payment of any Fee or any other amount (other than an amount referred to in clause (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent, at the request of the Required Lenders, shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans then outstanding so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding and (iii) demand Cash Collateral pursuant to Section 2.22.”

Section 2. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by .pdf or other electronic form shall be effective as delivery of a manually executed original counterpart of this Agreement.

Section 3. Amendments; Headings; Severability. This Agreement may not be amended nor may any provision hereof be waived except pursuant to a writing signed by Holdings, the Borrower and the Required Lenders. The Section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting this Agreement. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 4. Governing Law; Etc.

(a) THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLE OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF ANY OTHER LAW.

(b) EACH PARTY HERETO HEREBY AGREES AS SET FORTH IN SECTIONS 9.13 AND 9.17 OF THE CREDIT AGREEMENT AS IF SUCH SECTIONS WERE SET FORTH IN FULL HEREIN

Section 5. Notices. All notices hereunder shall be given in accordance with the provisions of Section 9.01 of the Credit Agreement.

Section 6. Entire Agreement. This Agreement, the Credit Agreement, and the other Loan Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties hereto with respect to the subject matter hereof.

[SIGNATURES BEGIN NEXT PAGE]



IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first written above.

HOLDINGS:

**EXELA INTERMEDIATE HOLDINGS LLC**

By: /s/ Suresh Yannamani

Name: Suresh Yannamani

Title: President

BORROWER:

**EXELA INTERMEDIATE LLC**

By: /s/ Suresh Yannamani

Name: Suresh Yannamani

Title: President

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**REVOLVING LOAN EXCHANGE AND PREPAYMENT AGREEMENT**

This REVOLVING LOAN EXCHANGE AND PREPAYMENT AGREEMENT (this “**Agreement**”) is made as of March 7, 2022 by and among Exela Intermediate Holdings, LLC, a Delaware limited liability company (“**Holdings**”), Exela Intermediate LLC, a Delaware limited liability company (the “**Company**”), and the parties set forth on the signature pages hereto (each, a “**Lender**” and collectively, the “**Lenders**”).

**RECITALS**

WHEREAS, the Lenders are party to that certain First Lien Credit Agreement dated as of July 12, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined) among Holdings, the Company, as Borrower, the lenders party thereto from time to time and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (in such capacity, the “**Administrative Agent**”); and

WHEREAS, the Company desires the Lenders to exchange (the “**Revolving Loan Exchange**”) any and all of the aggregate principal amount of the Revolving Facility Loans (including, for the avoidance of doubt, Obligations in respect of Letters of Credit) outstanding under the Credit Agreement (the “**Revolving Loans**”) for (i) \$50.0 million in cash (the “**Cash Amount**”), and (ii) \$50.0 million of new 11.500% First-Priority Senior Secured Notes due 2026 issued pursuant a supplemental indenture (the “**Supplemental Indenture**”) to the Indenture dated as of December 9, 2021 (the “**Existing Indenture**”) between the Company and Exela Finance Inc., as issuers (the “**Issuers**”), the subsidiary guarantors party thereto and U.S. Bank National Association, as trustee (in such capacity, the “**Trustee**”) (the “**New Notes**” and, together with the cash consideration, the “**Exchange Consideration**”), subject in each case to applicable proration and other terms set forth herein (such exchange, the “**Exchange**”);

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows.

**1. EXCHANGE.****Section 1.1 Exchange.**

(a) Subject to the terms and conditions set forth in this Agreement, each Lender hereby agrees to exchange, and the Company agrees to accept for prepayment, at the Closing, all Revolving Loans held by such Lender on the Closing Date (which amount is set forth on such Lender’s signature page hereto, it being understood that such amount on such signature page is for informational purposes only) (the “**Closing Date Revolving Loans**”) for an amount of cash consideration and/or the New Notes to be determined by the Company as set forth below.

(b) On the Closing Date, each Lender will receive its pro rata share of the Cash Amount and the New Notes in exchange for its Closing Date Revolving Loans (the “**Total Consideration**”).

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(c) Effective upon the Closing, all Revolving Loans (and respective Revolving Facility Commitments) held by each Lender shall be cancelled and the Company's obligation to pay any amounts due under such Revolving Loans shall be terminated and any accrued and unpaid interest and fees on such Revolving Loans shall be paid at Closing.

(d) This Agreement shall constitute any notice of prepayment or termination or reduction of commitments required pursuant to the Credit Agreement in connection with the prepayment of all Closing Date Revolving Loans and termination of the corresponding Revolving Facility Commitments on the Closing Dates.

(e) Immediately prior to giving effect to the Exchange, to the extent that the Exchange or any other action or transaction necessary or advisable to implement or effectuate the Exchange (collectively, "**Exchange Transactions**") may not be permitted under the terms of the Credit Agreement, any other Loan Document or any other provision thereof, the Credit Agreement, any such Loan Document and any such provision thereof are hereby waived, amended or otherwise modified to permit any and all Exchange Transactions (and any other transactions in connection therewith or contemplated thereby), in each case, to the extent permitted to be waived, amended or otherwise modified in accordance with Section 9.09 of the Credit Agreement. In furtherance of Section 8.03 of the Credit Agreement, the Lenders party hereto hereby direct, instruct, request and consent to the Administrative Agent taking all actions, including, delivery and execution of any documentation, that may be necessary or advisable to implement or effectuate the Exchange Transactions.

(f) In the event that any one or more of the provisions contained in this Agreement or any other documents entered into in connection with or related to the Exchange should be held invalid, illegal or unenforceable (or the requisite consents are not obtained to otherwise permit the actions or transactions contemplated by such provision), in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace such invalid, illegal, unenforceable or impermissible provisions with a valid provisions with economic effect of which comes as close as to that of the invalid, illegal, unenforceable or impermissible provisions and/or such provisions shall be deemed amended, waived or modified in a manner that otherwise gives the same economic effect to the proposed Exchanged Transactions without the consent of any other party.

(g) Notwithstanding anything to the contrary, the prepayments made pursuant to the Exchange shall be made by the Borrower directly to the applicable Lender, on a pro rata basis, in the form contemplated hereby, without condition or deduction for any defense, recoupment, set-off or counterclaim (and without the requirement that any such amounts or consideration be distributed through the Administrative Agent).

2. **[Reserved]**.

3. **CLOSING**.

**Section 3.1 Closing.** The closing of the Revolving Loan Exchange shall take place at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas,

New York, NY 10019 or remotely via the exchange of documents and signatures (the “**Closing**” and the date upon which all conditions to Closing have been satisfied, the “**Closing Date**”).

**Section 3.2 Conditions to the Lenders’ Obligations** . The obligation of each Lender to complete the Closing is subject to the fulfillment, on or before the Closing Date, of each of the following conditions precedent (except to the extent that any such condition shall have been waived in writing by such Lender): (a) each of the representations and warranties of the Company contained in Section 4 are true and correct in all material respects on the Closing Date with the same effect as though such representations and warranties had been made on and as of such Closing Date, (b) the Company shall have complied with its covenants under this Agreement in all material respects as of such Closing Date, (c) the Company shall have paid all reasonable and documented fees, charges, expenses, and disbursements of Latham & Watkins LLP, as counsel to the Lenders, incurred through and including such Closing Date, (d) all of the Closing Date Revolving Loans being subject to the Revolving Loan Exchange, (e) delivery of the items set forth in Section 3.4 in a manner satisfactory to the Lenders, (f) execution and delivery of the agreement set forth in Section 3.5 in form and substance satisfactory to the Lenders, and (g) the Company shall have executed Assignment and Acceptances, substantially in the form attached as Exhibit A to the Credit Agreement, consenting to the elevation of RevolverCap Partners Fund, L.P. to a lender of record.

**Section 3.3 Condition to the Company’s Obligations**. The obligation of the Company to complete the Closing with any Lender is subject to the fulfillment, on or before the Closing Date, of each of the following conditions precedent: (a) each of the representations and warranties of such Lender contained in Section 5 are true and correct in all material respects on the Closing Date with the same effect as though such representations and warranties had been made on and as of such Closing Date, (b) each Lender shall have complied with its covenants under this Agreement in all material respects as of such Closing Date, (c) delivery of the items set forth in Section 3.4 in a manner satisfactory to the Company, and (d) execution and delivery of the agreement set forth in Section 3.5 in form and substance satisfactory to the Company.

**Section 3.4 Delivery of Securities and Payment of Cash Consideration**. At the Closing, subject to the terms and conditions hereof, (a) the Company shall deliver to each Lender evidence reasonably satisfactory to such Lender of the issuance, through the facilities of the Depository Trust Company, of the New Notes to such Lender, and (b) the Company shall pay to each Lender the applicable Cash Amount pursuant to the Revolving Loan Exchange (by wire transfer to the account designated on such Lender’s executed signature page).

**Section 3.5 Execution of Supplemental Indenture; Fungibility of New Notes**. At the Closing, subject to the terms and conditions hereof, the Issuers will enter into the Supplemental Indenture with the Trustee to issue the New Notes, which shall be effective on the Closing Date. The Company shall cause the New Notes to have the same CUSIP number(s) as the notes issued under the Existing Indenture and to otherwise cause the New Notes to be fungible with such notes.

#### 4. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND CERTAIN OF ITS SUBSIDIARIES.

The Company hereby represents and warrants, as of the date hereof and as of the Closing Date (unless otherwise specifically provided) to the Lenders, and agrees with each Lender as follows:

(a) **Organization and Good Standing.** The Company is duly incorporated and organized, and is validly existing and in good standing, under the laws of the State of Delaware, and each subsidiary of the Company that is party to the Supplemental Indenture (each, a “**Subsidiary Party**”) is duly organized and is validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) **Due Authorization.** All corporate action on the part of the board of directors (or similar governing body) of the Company and each Subsidiary Party necessary for the authorization, execution, delivery of, and the performance of all obligations of the Company and each Subsidiary Party (to the extent party thereto) under this Agreement and under the Supplemental Indenture has been taken as of the date hereof or will be taken prior to the Closing Date. As of the date hereof, this Agreement constitutes and, as of the Closing Date, this Agreement and the Supplemental Indenture will constitute, a valid and legally binding obligation of the Company and each Subsidiary Party that is party thereto, enforceable against each in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, or other laws of general application relating to or affecting the enforcement of creditors’ rights generally and (ii) the effect of rules of law governing the availability of equitable remedies.

(c) **Corporate Power.** The Company and each Subsidiary Party has the corporate (or other entity, as the case may be) power and authority to execute and deliver, and perform its obligations under, this Agreement and the Supplemental Indenture (to the extent party thereto).

(d) **Valid Issuance.** As of the Closing Date, (i) the Supplemental Indenture will have been duly authorized, executed and delivered by the Company and each Subsidiary Party that is party thereto; and (ii) assuming the authentication of the New Notes by the Trustee, the Supplemental Indenture will constitute the valid and legally binding obligation of each of the Company and each Subsidiary Party that is party thereto, enforceable in accordance with its terms, except as may be limited by (1) applicable bankruptcy, insolvency, reorganization, or other laws of general application relating to or affecting the enforcement of creditors’ rights generally and (2) the effect of rules of law governing the availability of equitable remedies.

(e) **Solvency.** Each of the Company and Holdings is, and after giving effect to the payment of the Exchange Consideration and obligations incurred in connection herewith and the transactions contemplated hereby will be, Solvent. “**Solvent**” with respect to the Company or Holdings, as of any date of determination, means that on such date, on a consolidated basis, (i) the present fair salable value of the property and assets of such entity exceeds the debts and liabilities, including contingent liabilities, of such entity; (ii) the present fair salable value of the property and assets of such entity is greater than the amount that will be required to pay the probable liability of such entity on its debts and other liabilities, including contingent liabilities,

as such debts and other liabilities become absolute and matured; (iii) such entity does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts and liabilities, including contingent liabilities, beyond its ability to pay such debts and liabilities as they become absolute and matured; and (iv) such entity does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, reasonably estimates the amount of contingent liability known or reasonably identifiable by the Company or Holdings, as applicable, that can reasonably be expected to become an actual or matured liability.

(f) **Disclosure of Information.** The Company has delivered or made available to the Lenders (i) all material agreements (including ancillary documents) entered into or otherwise executed by the Company and (ii) all material information that was disclosed in writing to the exchanging noteholders or lenders, in each case, in connection with the exchange transactions consummated on December 9, 2021.

5. **REPRESENTATIONS, WARRANTIES, AND CERTAIN AGREEMENTS OF THE LENDERS.**

Each Lender hereby, severally and not jointly, represents and warrants to as of the date hereof and as of the Closing Date (unless otherwise specifically provided), and agrees with the Company as follows:

(a) **Authorization.** This Agreement constitutes such Lender's valid and legally binding obligation, enforceable against such Lender in accordance with its terms except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) the effect of rules of law governing the availability of equitable remedies. Such Lender represents and warrants to the Company that it has the requisite power and authority to enter into this Agreement. Such Lender does not have any record or beneficial interest in the Credit Agreement other than the Revolving Loans to be exchanged at the Closing. No consent, approval, permit, governmental order, declaration or filing with, or notice to, any governmental authority is required by or with respect to such Lender in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(b) **Disclosure of Information.** Such Lender has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the New Notes and to obtain additional information necessary to verify any information furnished to such Lender or to which such Lender had access. Such Lender has evaluated the merits and risks of participating in the transactions contemplated hereby based exclusively on its own independent review and consultations with such investment, legal, tax, accounting and other advisers as it deemed necessary. Such Lender has made its own decision concerning the transactions contemplated hereby in reliance on the representations and warranties of the Company set forth in this Agreement.

(c) **Investment Experience.** Such Lender understands that the transactions contemplated hereby involve substantial risk. Such Lender (i) has experience as an investor in securities of companies and acknowledges that it is able to fend for itself, can bear the economic risk of the transactions contemplated hereby and its investment in the New Notes and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the transactions contemplated hereby and protecting its own interests in connection with this investment and/or (ii) has a preexisting personal or business relationship with the Company and certain of its officers, directors, or controlling persons of a nature and duration that enables it to be aware of the character, business acumen, and financial circumstances of such persons.

(d) **Investor Status.** Such Lender either (i) qualifies as a “*qualified institutional buyer*” (as defined in Rule 144A under the Securities Act) or (ii) is not located in the United States and is not a “U.S. Person” within the meaning of Regulation S under the Securities Act.

(e) **Good Title.** Such Lender is the sole legal, beneficial and equitable owner of the Revolving Loans it is exchanging pursuant to this Agreement, and holds such Revolving Loans free and clear of any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership whatsoever.

(f) **Restricted Securities.**

(i) Such Lender understands that the offer and sale of the New Notes have not been registered under the Securities Act or the securities laws of any U.S. state, and, therefore, the New Notes cannot be resold unless they are so registered or unless an exemption from registration is available. Such Lender further understands that it is not contemplated that any registration of the New Notes will be made under the Securities Act or any securities laws of any U.S. state and understands that the exemptions from registration afforded by Rule 144 under the Securities Act (“*Rule 144*”) (the provisions of which are known to it) depend on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts. Such Lender will not attempt to pledge, transfer, convey or otherwise dispose of the New Notes acquired hereunder without such registration or exemption. The foregoing restrictions are referred to herein as the “*Securities Law Restrictions.*” Such Lender understands that the New Notes will bear a legend reflecting the Securities Law Restrictions.

(ii) Such Lender is the sole party in interest as to the Revolving Loans that it is exchanging pursuant to this Agreement and is exchanging said Revolving Loans and the entire legal and beneficial interest therein for its own account, not with a view toward the resale or distribution of the New Notes, and such Lender has no present intention of selling or otherwise distributing the New Notes. Such Lender has not offered or sold the New Notes within the meaning of the Securities Act or any securities laws of any U.S. state. Such Lender has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition of the New Notes.

6. **RELEASE OF LENDERS.**

**Section 6.1 Release.** Each Loan Party hereby forever waives, releases, remises, and discharges the Administrative Agent, the Lenders and each of their respective Affiliates, and each of their officers, directors, employees, agents, and professionals (collectively, the “**Releasees**”), from any and all claims (including, without limitation, cross-claims, counterclaims, rights of setoff and recoupment), demands, obligations, liabilities, causes of action, damages, losses, costs, and expenses of any kind or character, known or unknown, past or present, liquidated or unliquidated, suspected or unsuspected, which such Loan Party ever had from the beginning of the world, now has or might hereafter have against any such Releasee which concerns, directly or indirectly, the negotiation and execution of this Agreement, the Supplemental Indenture, the Credit Agreement or any other Loan Document, or any acts or omissions of any such Releasee relating to this Agreement, the Supplemental Indenture, the Credit Agreement, or any other Loan Document, in each case, to the extent pertaining to facts, events or circumstances existing on or prior to (but not after) the Closing Date (the “**Released Claims**”). The Loan Parties further agree to refrain from commencing, instituting or prosecuting, or supporting any person that commences, institutes, or prosecutes, any lawsuit, action or other proceeding against any and all Releasees with respect to any and all Released Claims. As to each and every claim released hereunder, each Loan Party hereby represents that it has received the advice of legal counsel with regard to the releases contained herein. The foregoing release shall survive the termination of the Credit Agreement and the other Loan Documents and payment of the Exchange Consideration.

7. **WAIVER BY LENDERS.**

**Section 7.1 Waiver.** Pursuant to Section 9.09(b)(y) of the Credit Agreement, in reliance upon the representations, warranties, and covenants of the Company and Holdings contained in this Agreement, effective on the Closing Date, the Lenders hereby waive any and all potential and existing Defaults and Events of Default under the Credit Agreement to the greatest extent permitted thereunder; provided, that, for the avoidance of doubt, if the Closing Date does not occur, for any reason whatsoever, (i) such waiver shall be of no force or effect, and (ii) the Administrative Agent and the Lenders shall be entitled to pursue any and all rights and remedies relating to such Defaults or Events of Default; provided, further, that the Closing Date shall be deemed not to have occurred if the Closing does not take place on or before March 28, 2022.

8. **CONFIRMATION OF LIEN RELEASE.**

**Section 8.1 Confirmation.** Immediately prior to the consummation of the Exchange, each Lender shall use its reasonable best efforts to cause the Collateral Agent to execute a confirmation of lien release in connection with the Company’s refinancing of its existing Permitted Securitization Financing with the proceeds of a new Permitted Securitization Financing.



9. **GENERAL PROVISIONS.**

**Section 9.1 Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

**Section 9.2 Governing Law.** This Agreement shall be governed by and construed under the internal laws of the State of New York without reference to principles of conflict of laws or choice of laws that would indicate the applicability of the laws of any other jurisdiction.

**Section 9.3 Reinstatement.** Each of the Company and Holdings agrees that, to the extent that the Company or any other person (as defined in the Credit Agreement) makes a payment or payments (in cash or otherwise) to the Administrative Agent or any Lender under this Agreement, or the Administrative Agent or any Lender receives any proceeds of Collateral securing the Revolving Loans or any other payments with respect thereto, which payment or receipt of proceeds or any part thereof is subsequently avoided, rescinded, invalidated, declared to be fraudulent or preferential, set aside, or required to be returned or repaid to the Company (as a debtor in possession or otherwise), its estate, its trustee, its receiver, or any other person (a) under any insolvency or bankruptcy law, state or federal law, common law, or equitable cause; (b) upon or as a result of the appointment of a receiver, intervenor, or conservator of, or trustee or similar officer for, the Company or any other Loan Party or any substantial part of their respective property; or (c) for any similar reason, then to the extent of such payment, return, or repayment, the Revolving Loans shall either be reinstated or continue in full force and effect in accordance with the terms of the Credit Agreement, all as though such payment or payments had not been made, notwithstanding any contrary action that may have been taken by the Administrative Agent or any Lenders in reliance upon such payment, and any such contrary action so taken shall be deemed to have been conditioned upon such payment having become final and irrevocable.

**Section 9.4 Counterparts; Facsimile Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile or other electronic transmission (i.e., a “pdf” or “tif”) (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) shall be effective as delivery of a manually executed counterpart thereof.

**Section 9.5 Headings; Interpretation.** In this Agreement, (i) the meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined, (ii) the captions and headings are used only for convenience and are not to be considered in construing or interpreting this Agreement, and (iii) the words “*including*” and “*include*” shall be deemed to be followed by the words “*without limitation.*” All references in this Agreement to “*Sections*” shall, unless otherwise provided, refer to sections hereof.

**Section 9.6** Notices.

(a) Any and all notices required or permitted under this Agreement shall be given in writing and shall be deemed effectively given (i) at the time of personal delivery, if delivered in person; (ii) at the time of transmission by facsimile or email, addressed to the other party at its facsimile number or email address specified herein (or hereafter modified by subsequent notice to the parties hereto), with confirmation of receipt made by printed confirmation sheet verifying successful transmission of the facsimile or confirmation of receipt of the email by return email; (iii) one business day after deposit with an express overnight courier for United States deliveries, or two business days after deposit with an international express air courier for deliveries outside of the United States, with proof of delivery from the courier requested; or (iv) three business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries.

(b) All notices for delivery outside the United States will be sent by facsimile, email or by express courier. All notices not delivered personally or by facsimile or email will be sent with postage and/or other charges prepaid and properly addressed to the party to be notified at the address, facsimile number or email address as follows, or at such other address, facsimile number or email address as such other party may designate by one of the indicated means of notice herein to the other parties hereto as follows:

(i) if to a Lender, at the address as set forth on such Lender's signature page hereto.

(ii) if to the Company

Exela Intermediate LLC  
2701 East Grauwlyer Road  
Irving, Texas 75061  
Attn: General Counsel  
Email: legalnotices@exelatech.com

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Phone: (212) 373-3000  
Attention: Brian Kim  
Email Address: bkim@paulweiss.com;

**Section 9.7** Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

**Section 9.8** Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the exchange of the Closing Date Revolving Loans

on the Closing Date and supersede any and all prior negotiations, correspondence, agreements, understandings, duties, or obligations between the parties with respect to the subject matter hereof.

**Section 9.9 Further Assurances.** From and after the date of this Agreement, upon the request of a Lender or the Company, the Company and each Lender shall execute and deliver such instruments, documents, or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the Revolving Loan Exchange and the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**EXELA INTERMEDIATE HOLDINGS LLC**

By: /s/ Suresh Yannamani

Name: Suresh Yannamani

Title: President

**EXELA INTERMEDIATE LLC**

By: /s/ Suresh Yannamani

Name: Suresh Yannamani

Title: President

*[Signature Page to Revolving Loan Exchange and Prepayment Agreement]*

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**GRANITE STATE CAPITAL MASTER FUND,  
LP, as a Revolving Facility Lender**

By: /s/ Jeffrey Gelles  
Name: Jeffrey Gelles  
Title: Principal

*[Signature Page to Revolving Loan Exchange and Prepayment Agreement]*

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**CREDIT SUISSE LOAN FUNDING LLC,**  
as a Revolving Facility Lender

By: /s/ Jinah Lim

Name: Jinah Lim

Title: Authorized Signatory

*[Signature Page to Revolving Loan Exchange and Prepayment Agreement]*

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**KKR CORPORATE LENDING LLC,**  
as a Revolving Facility Lender

By: /s/ John Knox

Name: John Knox

Title: CFO

*[Signature Page to Revolving Loan Exchange and Prepayment Agreement]*

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**ROYAL BANK OF CANADA,**  
as a Revolving Facility Lender

By: /s/ Mari J. Hodgkinson  
Name: Mari J. Hodgkinson  
Title: Authorized Signatory

*[Signature Page to Revolving Loan Exchange and Prepayment Agreement]*

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**CREDIT SUISSE AG, CAYMAN ISLANDS  
BRANCH, as a Revolving Facility Lender**

By: /s/ Lawrence Park  
Name: Lawrence Park  
Title: Authorized Signatory

By: /s/ Rizwan Merchant  
Name: Rizwan Merchant  
Title: Authorized Signatory

*[Signature Page to Revolving Loan Exchange and Prepayment Agreement]*

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**REVOLVERCAP PARTNERS FUND, L.P.,**  
as a Revolving Facility Lender

By: /s/ Israel Wallach  
Name: Israel Wallach  
Title: Managing Partner

*[Signature Page to Revolving Loan Exchange and Prepayment Agreement]*

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**SUBSIDIARIES OF REGISTRANT**

<b>Subsidiary Name</b>	<b>Jurisdiction of Formation</b>
AAXE LLC	Delaware
Arista SA	France
Asterion Belgium N.V.	Belgium
Asterion Denmark A/S	Denmark
Asterion DM Finland A.B.	Sweden
Asterion France S.A.S	France
Asterion International GmbH	Germany
Asterion Sweden A.B.	Sweden
BancTec (Canada), Inc.	Canada
BancTec (Philippines), Inc.	Philippines
BancTec (Puerto Rico), Inc.	Delaware
BancTec B.V.	Netherlands
BancTec Europe Limited	U.K.
BancTec Group LLC	Delaware
BancTec Holding N.V.	Netherlands
BancTec India Pvt. Ltd.	India
BancTec Intermediate Holding, Inc.	Delaware
BancTec Transaktionservice GmbH	Austria
BancTec, Inc.	Delaware
BTC International Holdings, Inc.	Delaware
BTC Ventures, Inc.	Delaware
Charter Lason, Inc.	Delaware
CorpSource Holdings, LLC	Delaware
Dataforce Interact Holdings Ltd.	U.K.
Dataforce Interact Ltd.	U.K.
Deliverex, LLC	Delaware
DF Property Portfolio Ltd.	U.K.
DFG UK, LLC	Delaware
DFG2 Holdings, LLC	Delaware
DFG2, LLC	Delaware
DocuData Solutions, L.C.	Texas
Drescher Euro-Label Sp Z.o.o.	Poland
Drescher Full-Service Versand GmbH	Germany
Economic Research Services, Inc.	Florida
ETI IP Holdings, LLC	Delaware
ETI IP LLC	Delaware
ETI RE Holdings, LLC	Delaware
ETI RE LLC	Delaware
ETI-MNA Holdings, LLC	Delaware
ETI-MNA, LLC	Delaware
ETI-XCV Holdings, LLC	Delaware
ETI-XCV, LLC	Delaware
Exela Enterprise Solutions, Inc.	Delaware
Exela Finance, Inc.	Delaware
Exela Intermediate Holdings, LLC	Delaware
Exela Intermediate, LLC	Delaware
Exela RE LLC	Delaware

<b>Subsidiary Name</b>	<b>Jurisdiction of Formation</b>
Exela Receivables 1, LLC	Delaware
Exela Receivables Holdco, LLC	Delaware
Exela Receivables 3, LLC	Delaware
Exela Receivables 3 Holdco, LLC	Delaware
Exela Technologies AB	Sweden
Exela Technologies AS	Norway
Exela Technologies BV	Netherlands
Exela Technologies doo Belgrade	Serbia
Exela Technologies ECM Solutions GmbH	Germany
Exela Technologies GmbH	Germany
Exela Technologies Holding GmbH	Germany
Exela Technologies Ibercia S.A.	Spain
Exela Technologies Limited	U.K.
Exela Technologies Private Ltd.	India
Exela Technologies RE BV	Netherlands
Exela Technologies S.A.	France
Exela Technologies s.p. z.o.o.	Poland
Exela Technologies Services SA	Belgium
Exela Technologies Services SAS	France
Exela Technologies, Inc.	Delaware
Exela XBP, LLC	Delaware
Fedaso France SAS	France
Fedaso SA	Morocco
FTS Parent Inc.	Delaware
Glo-X, Inc.	Oklahoma
GP 2XCV Holdings, LLC	Delaware
GP 2XCV LLC	Delaware
GP Auto Empire Ltd.	Ireland
HOV Enterprise Services, Inc.	New Jersey
HOV Global Services Ltd.	U.K.
HOV Services, (Beijing) Ltd.	China
HOV Services, (Nanchang) Ltd.	China
HOV Services, Inc.	Delaware
HOV Services, LLC	Nevada
HOVG, LLC	Nevada
Ibis Consulting, Inc.	Rhode Island
Imagenes Digitales S.A. de C.V.	Mexico
J & B Software, Inc.	Pennsylvania
Kinsella Media, LLC	Delaware
Lason International, Inc.	Delaware
LexiCode Healthcare, Inc.	Philippines
Managed Care Professionals, LLC	Delaware
Meridian Consulting Group, LLC	Nevada
Novitex Acquisition, LLC	Delaware
Novitex Enterprise Solutions Canada, Inc.	Canada
Novitex Government Solutions, LLC	Delaware
Novitex Holdings, Inc.	Delaware
Novitex Intermediate, LLC	Delaware

<b>Subsidiary Name</b>	<b>Jurisdiction of Formation</b>
O.T. Drescher AG	Switzerland
Orone Contract SARL	Morocco
Pangea Acquisitions, Inc.	Delaware
Plexus Europe Ltd.	U.K.
Promotora de Tecnologia, S.A. de C.V.	Mexico
RC4 Capital, LLC	Delaware
Recognition de Mexico S.A. de C.V.	Mexico
Recognition Mexico Holding, Inc.	Delaware
Regulus America LLC	Delaware
Regulus Group II LLC	Delaware
Regulus Group LLC	Delaware
Regulus Holding Inc.	Delaware
Regulus Integrated Solutions LLC	Delaware
Regulus West LLC	Delaware
Rust Consulting, Inc.	Minnesota
Rustic Canyon III, LLC	Delaware
S-Corp Philippines, Inc.	Phillippines
SDS Applications Limited	U.K.
SDS Trading Applications Limited	U.K.
Services Integration Group, L.P.	Delaware
SIG-G.P., L.L.C.	Delaware
SourceCorp BPS, Inc.	Delaware
Sourcecorp de Mexico S.A. de C.V.	Mexico
SourceCorp Legal, Inc.	Delaware
SourceCorp Management, Inc.	Texas
SOURCECORP, Inc.	Delaware
SourceHOV Canada	Nova Scotia
SourceHOV HealthCare, Inc.	South Carolina
SourceHOV Holdings, Inc.	Delaware
SourceHOV India Pvt. Ltd.	India
SourceHOV LLC	Delaware
TRAC Holdings, LLC	Delaware
TRAC, LLC	Nevada
TransCentra, Inc.	Delaware
United Information Services, Inc.	Iowa

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (No. 333-219494, No. 333-219157, No. 333-260046, 333-255707, and 333-255708) on Form S-3 and the registration statements (No. 333-222743 and No. 333-262767) on Form S-8 of our reports dated March 16, 2022 with respect to the consolidated financial statements of Exela Technologies, Inc. and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

Detroit, Michigan

March 16, 2022

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## CERTIFICATION

I, Ronald Cogburn, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2021 of Exela Technologies, 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 16, 2022

/s/ Ronald Cogburn

Name: Ronald Cogburn  
Title: Chief Executive Officer  
(Principal Executive Officer)

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## CERTIFICATION

I, Shrikant Sortur, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2021 of Exela Technologies, 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 16, 2022

/s/ Shrikant Sortur

Name: Shrikant Sortur

Title: Chief Financial Officer

(Principal Financial and Accounting Officer)

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**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Exela Technologies, Inc. (the "Company") on Form 10-K for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ronald Cogburn, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 16, 2022

/s/ Ronald Cogburn  
\_\_\_\_\_  
Name: Ronald Cogburn  
Title: Chief Executive Officer  
(Principal Executive Officer)

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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**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Exela Technologies, Inc. (the "Company") on Form 10-K for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Shrikant Sortur, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 16, 2022

Name:	/s/ Shrikant Sortur
Title:	Shrikant Sortur
	Chief Financial Officer
	(Principal Financial and Accounting Officer)

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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