

**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, 2022

OR

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

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

Commission File Number: **001-36089**

**RingCentral, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation or organization)

**94-3322844**  
(I.R.S. Employer  
Identification No.)

**20 Davis Drive  
Belmont, California 94002**  
(Address of principal executive offices)

**(650) 472-4100**  
(Registrant's telephone number, including area code)

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

| Title of each class                                | Trading Symbol(s) | Name of each exchange on which registered |
|--|-------------------|---|
| <b>Class A Common Stock<br/>par value \$0.0001</b> | <b>RNG</b>        | <b>New York Stock Exchange</b>            |

Securities registered pursuant to section 12(g) of the Act:

**None**

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

Indicate by check mark if the registrant is not required to file 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 to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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

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

|                         |                                     |                           |                          |
|-------------------------|-------------------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input checked="" type="checkbox"/> | Accelerated filer         | <input type="checkbox"/> |
| Non-accelerated filer   | <input type="checkbox"/>            | Smaller reporting company | <input type="checkbox"/> |
|                         |                                     | Emerging growth company   | <input type="checkbox"/> |

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

Indicate by check mark whether the registrant 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.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of voting stock held by non-affiliates of the Registrant on June 30, 2022, based on the closing price of \$52.26 for shares of the Registrant's common stock as reported by the New York Stock Exchange, was approximately \$4.5 billion. Shares of common stock held by each executive officer, director, and their affiliated holders have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 14, 2023, there were 85,549,766 shares of Class A Common Stock and 9,924,538 shares of Class B Common Stock outstanding.

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**PART I.**

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This Annual Report on Form 10-K contains forward-looking statements that are based on our management's beliefs and assumptions and on information currently available to our management. The forward-looking statements are contained principally in, but not limited to, the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations". Forward-looking statements include all statements that are not historical facts and can be identified by terms such as "anticipates", "believes", "could", "seeks", "estimates", "expects", "intends", "may", "plans", "potential", "predicts", "projects", "should", "will", "would" or similar expressions and the negatives of those terms. Forward-looking statements include, but are not limited to, statements about:

- our progress against short-term and long-term goals;
- our future financial performance;
- our anticipated growth, growth strategies and our ability to effectively manage that growth and effect these strategies;
- our success in the enterprise market;
- anticipated trends, developments and challenges in our business and in the markets in which we operate, as well as general macroeconomic conditions;
- our ability to scale to our desired goals, particularly the implementation of new processes and systems and the addition to our workforce;
- the impact of competition in our industry and innovation by our competitors;
- our ability to anticipate and adapt to future changes in our industry;
- our ability to predict subscriptions revenues, formulate accurate financial projections, and make strategic business decisions based on our analysis of market trends;
- our ability to anticipate market needs and develop new and enhanced solutions and subscriptions to meet those needs, and our ability to successfully monetize them;
- maintaining and expanding our customer base;
- maintaining, expanding and responding to changes in our relationships with other companies;
- maintaining and expanding our distribution channels, including our network of sales agents and resellers, and our strategic partnerships;
- our success with our strategic partners and global service providers;
- our ability to sell, market, and support our solutions and services;
- our ability to expand our business to larger customers as well as expanding domestically and internationally;
- our ability to realize increased purchasing leverage and economies of scale as we expand;
- the impact of seasonality on our business;
- the impact of any failure of our solutions or solution innovations;
- our reliance on our third-party product and service providers;
- the potential effect on our business of litigation to which we may become a party;
- our liquidity and working capital requirements;
- the impact of changes in the regulatory environment;
- our ability to protect our intellectual property and rely on open source licenses;
- our expectations regarding the growth and reliability of the internet infrastructure;
- the timing of acquisitions of, or making and exiting investments in, other entities, businesses or technologies;
- our ability to successfully and timely execute on, integrate, and realize the benefits of any acquisition, investment, strategic partnership, or other strategic transaction we may make or undertake;
- our capital expenditure projections;

- our capital allocation plans, including expected allocations of cash and timing for any share repurchases and other investments
- the estimates and estimate methodologies used in preparing our consolidated financial statements;
- the political environment and stability in the regions in which we or our subcontractors operate;
- the impact of economic downturns on us and our customers;
- our ability to defend our systems and our customer information from fraud and cyber-attack;
- our ability to prevent the use of fraudulent payment methods for our solutions;
- our ability to retain key employees and to attract qualified personnel; and
- the impact of foreign currencies on our non-U.S. business as we expand our business internationally.

Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be significantly different from any future results, performance or achievements expressed or implied by the forward-looking statements. We discuss these risks in greater detail in the section entitled “Risk Factors” and elsewhere in this Annual Report on Form 10-K. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Also, forward-looking statements represent our management’s beliefs and assumptions only as of the date in this Annual Report on Form 10-K. You should read this Annual Report on Form 10-K completely and with the understanding that our actual future results may be significantly different from what we expect.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ significantly from those anticipated in these forward-looking statements, even if new information becomes available in the future.

## **ITEM 1. BUSINESS**

### **Overview**

We are a leading provider of global enterprise cloud communications, video meetings, collaboration, and contact center software-as-a-service (“SaaS”) solutions. We believe that our innovative, cloud-based communication and customer engagement platform disrupts the large market for business communications and collaboration by providing flexible and cost-effective solutions that support mobile and distributed workforces. We enable convenient and effective communications for organizations across all their locations and employees, enabling them to be more productive and responsive.

Our cloud-based solutions are designed to be easy to use, providing a global user identity across devices, including smartphones, tablets, PCs and desk phones. Our solutions can be deployed rapidly and configured and managed easily. Our cloud-based solutions are location and device independent and better suited to address the needs of modern mobile and global enterprise workforces than are legacy on-premises systems. Through our open platform, we enable third-party developers and customers to develop integrations and workflows using our robust set of Application Programming Interface (“API”) and software developers’ kits (“SDKs”).

The rapid growth of mobile communications has changed the way businesses interact. Employees connect from anywhere with any device, using multiple modes of communications including messaging, video, phone, and text. These forms of flexible communications enable employees to be productive in ways that traditional on-premises systems do not support.

We believe RingCentral benefits from both the shift to mobile and distributed workforces and the migration of on-premises based communication systems to cloud-based software solutions. Our cloud communications and customer engagement solutions are based on our Message Video Phone (MVP) platform, which has been designed from the ground up, specifically for today’s mobile and distributed workforce. In addition, our differentiated open platform enables seamless integration with third-party and custom software applications. These integrations improve business workflows resulting in higher employee productivity and better customer service. Our global delivery capabilities support the needs of multi-national enterprises in multiple countries.

We offer three key products in our portfolio, including:

- RingCentral MVP (formerly RingCentral Office), a Unified Communications as a Service (“UCaaS”) platform, including team messaging, video meetings, and a cloud phone system;
- Customer engagement solutions, including RingCentral Contact Center, RingCentral Engage Digital and Voice; and
- RingCentral Video, launched in 2020, our branded video meeting solution with team messaging that enables smart video meetings.

We generate revenues primarily from the sale of subscriptions for our cloud-based services. We focus on acquiring and retaining our customers, adding value to their experience, and increasing their use of our solutions. As their needs change, customers add users to services and additional features and functionality to expand their use of other solutions.

We continue to support our direct inside sales force while also developing indirect sales channels to market our brand and our subscription offerings. Our indirect sales channels who sell our solutions consist of:

- Regional and global network of resellers and distributors;
- Strategic partners who market and sell our MVP and other solutions, including co-branded solutions. Such partnerships include Mitel US Holdings, Inc. (“Mitel”), Amazon Web Services (“Amazon”), Alcatel-Lucent Enterprise (“ALE”), Avaya Holding Corp. (“Avaya”), Atos SE (“Atos”), and Unify Software and Solutions GmbH & CO. KG (“Unify”).
- Global Service Provider partners who sell our product, including AT&T (“AT&T”), TELUS Communications Company (“TELUS”), BT Group plc (“BT”), Vodafone Group Services Limited (“Vodafone”), Verizon Business (“Verizon”), Deutsche Telekom (“DT”), 1&1 Versatel in Germany, Ecotel in Germany, MCM in Mexico, Frontier, Charter Communications and others.

Our principal executive offices are located in Belmont, California. Our principal address is 20 Davis Drive, Belmont, California 94002, and our primary website address is [www.ringcentral.com](http://www.ringcentral.com). Information contained on, or that can be accessed through, our website, does not constitute part of this Annual Report on Form 10-K and inclusion of our website address in this Annual Report on Form 10-K is an inactive textual reference only.

“RingCentral” and other of our trademarks appearing in this report are our property. This report also contains trade names and trademarks of other companies. We do not intend our use or display of other companies’ trade names or trademarks to imply an endorsement or sponsorship of us by such companies, or any relationship with any of these companies.

## Our Solutions

Our cloud-based business communications, collaboration, and customer engagement solutions function across multiple locations and devices, including smartphones, tablets, PCs and desk phones, allow for communication across multiple modes, including high-definition (“HD”) voice, video, SMS, messaging and collaboration, conferencing, and fax. Our proprietary solutions enable a more productive and dynamic workforce and are architected using industry standards to meet modern business communications and collaboration requirements, including workforce mobility, “bring-your-own” communications device environments and multiple communications methods.

Our solutions are delivered using a highly available, and rapidly and easily scalable infrastructure, allowing our customers to add new users regardless of where they are located within our service footprint and promote business continuity. Our solutions are generally affordable, requiring little to no upfront infrastructure hardware costs or ongoing maintenance and upgrade costs commonly associated with on-premise systems and can be integrated with other existing communication systems.

We believe that our solutions go beyond the core functionality of existing on-premise communications solutions by providing additional key benefits that address the changing requirements of business to allow business communications using HD voice, video, SMS, messaging, collaboration, conferencing, and fax. The key benefits of our solutions include:

- **Location Independence.** Our cloud-based solutions are designed to be location independent. We seamlessly connect distributed and mobile users, enabling employees to communicate with a single identity whether working from a central location, a branch office, on the road, or at home.

- **Global.** Our RingCentral Global MVP capabilities support multinational enterprise workforces. RingCentral Global MVP connects multinational workforces globally, while reducing the complexity and high costs of maintaining multiple legacy private branch exchanges (“PBX systems”) with a single global cloud solution.
- **Device Independence.** Our solutions are designed to work with a broad range of devices, including smartphones, tablets, PCs, and desk phones, enabling businesses to successfully implement a “bring-your-own” communications device strategy.
- **Instant Activation and Easy Account Management.** Our solutions are designed for rapid deployment and ease of management. Our intuitive graphical user interfaces allow administrators and users to set up and manage their business communications system with little or no IT expertise, training, or dedicated staffing.
- **Analytics.** Our solutions enable superior user experience and drive business decisions through a single, real-time intuitive interface with configurable, out-of-the-box KPIs and metrics for monitoring all users, calls, meetings, devices, numbers, and queues, along with call quality scores and parameters.
- **Scalability.** Our cloud-based solutions scale easily and efficiently with the growth of our customers. Customers can add users, regardless of their location, without having to purchase additional infrastructure hardware or software upgrades.
- **Lower Cost of Ownership.** We believe that our customers experience significantly lower cost of ownership compared to legacy on-premise systems. Using our cloud-based solutions, our customers can avoid the significant upfront costs of infrastructure hardware, software, ongoing maintenance and upgrade costs, and the need for dedicated and trained IT personnel to support these systems.
- **Seamless and Intuitive Integration with Other Applications.** Applications are proliferating within businesses of all sizes. Integration of these business applications with legacy on-premise systems is typically complex and expensive, which limits the ability of businesses to leverage cloud-based applications. Our platform provides seamless and intuitive integration with multiple popular cloud-based business applications such as Microsoft productivity and CRM tools, Google G-Suite, Salesforce CRM, Oracle, Okta, Zendesk, Box, and Workday, as well as customer lines-of-business applications.

We have a portfolio of cloud-based offerings that are subscription-based and made available at different monthly rates, varying by the specific functionalities, services, and number of users. We primarily generate revenues from the sale of subscriptions of our offerings, which include the following:

**RingCentral MVP.** RingCentral MVP (formerly RingCentral Office), our flagship solution, provides a unified experience for communication and collaboration across multiple modes, including HD voice, video, SMS, messaging and collaboration, conferencing, online meetings, and fax. RingCentral MVP offers a unified Message, Video, and Phone experience on our global platform. Customers can extend RingCentral MVP to support their multinational workforce in many countries around the world. This subscription is designed primarily for businesses that require a communications solution, regardless of location, type of device, expertise, size, or budget. Businesses are able to seamlessly connect users working in multiple office locations on smartphones, tablets, PCs and desk phones. The features, capabilities and price per user increase from Essentials to Ultimate. The solution capabilities include high-definition voice, call management, mobile applications, business SMS and MMS, fax, team messaging and collaboration, audio/video/web conferencing capabilities, out-of-the-box integrations with other cloud-based business applications, and business analytics and reporting. Our platform also enables customers to create, develop, and deploy custom integrations using our APIs.

Key features of RingCentral MVP include:

- **Cloud-Based Business Communications Solutions.** We offer multi-user, multi-extension, cloud-based business communications solutions that do not require installation, configuration, management, or maintenance of on-premise hardware and software. Our solutions are instantly activated and deliver a rich set of functionalities across multiple locations and devices.
- **Team Messaging and Collaboration.** We offer team messaging and collaboration solutions which allow diverse teams to stay connected through multiple modes of communication. In addition to team messaging and communications, teams can share tasks, notes, group calendars, and files.
- **RingCentral Video (“RCV”) and RingCentral Rooms.** RingCentral Video leverages RingCentral’s open platform to address the demand in work from anywhere by leveraging technologies to enable a fast, unified, open, and trusted video meetings experience. It includes a robust analytics platform that gives IT system administrators access to key performance indicators such as adoption, usage, and quality of service metrics.

RCV is also integrated with business productivity applications such as Google Workspace, Salesforce, HubSpot, Microsoft 365, Slack, Theta Lake, and Zoho, among others. RingCentral Rooms and Rooms Connector bring a cloud web conferencing solution to meeting rooms and meeting spaces that have dedicated video conferencing equipment such as monitors, speakers, microphones, and cameras, and support for large meetings and webinars for a monthly per license add-on fee.

- **Mobile-Centric Approach.** Our solution includes smartphone and tablet mobile applications that customers can use to set up and manage company, department, and user settings from anywhere. Our applications turn iOS and Android smartphones and tablets into business communication devices. Users can change their personal settings instantly and communicate via voice, text, team messaging and collaboration, HD video and web conferencing, and fax. RingCentral MVP installed on personal mobile devices are fully integrated into the customer's cloud-based communication solution, using the company's numbers, and displaying one of the company's caller ID for calls made through our mobile applications.
- **Easy Set-Up and Control.** Our user interfaces provide a consistent user experience across smartphones, tablets, PCs, and desk phones, making it intuitive and easy for our customers to quickly discover and use our solution across devices. Among other capabilities, administrators can specify and modify company, department, user settings, auto-receptionist settings, call-handling, and routing rules, and add, change, and customize users and departments.
- **Flexible Call Routing.** Our solution includes an auto-attendant to easily customize call routing for the entire company, departments, groups, or individual employees. It includes a robust suite of communication management options, including time of day, caller ID, call queuing, and sophisticated routing rules for complex call handling for the company, departments, groups, and individual employees.
- **Cloud-based Business Application Integrations.** Our solution seamlessly integrates with other cloud-based business applications such as Salesforce CRM, Google Cloud, Box, Dropbox, Office365, Outlook, Oracle, Okta, Zendesk, Jira, Asana, and others. For example, our integration with Salesforce CRM brings up customer records immediately based on inbound caller IDs, resulting in increased productivity and efficiency. Our open platform is supported by APIs and software developers' kits ("SDKs") that allows developers to integrate our solution with leading business applications or with other custom applications to customize their own business workflows.
- **RingCentral Global MVP.** Our solution includes RingCentral Global MVP, a single global UCaaS solution designed for multinational enterprises that allows these companies to support distributed offices and employees globally with a single cloud solution. With RingCentral Global MVP, multinational enterprises can operate in other countries while also acting as one integrated business, with capabilities including local phone numbers, local caller ID, worldwide extension-to-extension dialing, and included minute bundles for international calling.
- **RingCentral Cloud Connector.** RingCentral Cloud Connector is a hybrid PBX solution where businesses can interconnect their on-premises PBX systems with RingCentral MVP. This allows for seamless internal employee dialing between on-premises PBX users and RingCentral cloud users. Previously, internal employee communication between both groups would be difficult to be connected, which caused increased overall telecommunications spend and IT complexities due to roaming charges and PSTN connectivity. Modern UCaaS providers like RingCentral changed that model and now include a hybrid PBX solution with offering.
- **RingCentral Direct Connect.** RingCentral Direct Connect is a service that allows enterprises to leverage their dedicated and secure connections to exchange data directly with the RingCentral cloud. Customers use their preferred network service provider to connect to the RingCentral cloud through a secure data exchange enabling lower latency, greater network reliability and availability, and added security.
- **High-Volume SMS.** High-Volume SMS is a service that enables businesses to send high-volume and commercial SMS messages and updates to their customers eliminating the need to purchase and program a separate number. Our service also provides access to message status, logs, store, and analytics for advanced insights and regulatory compliance.
- **RingCentral Live Reports.** RingCentral Live Reports is an add-on for RingCentral MVP customers to gather real-time information needed to maximize the performance with dashboards that contain information on agent utilization and overall customer experience.
- **RingCentral Fax.** RingCentral Fax provides online fax capabilities that allow businesses to send and receive fax documents without the need for a fax machine. RingCentral Fax capability is made available to all



RingCentral MVP customers or as a stand-alone offering at monthly subscription rates that vary based on the desired number of pages and phone numbers allotted to the plan.

**RingCentral Contact Center.** RingCentral Contact Center is a collaborative contact center solution that delivers AI powered omni-channel and workforce engagement solution with integrated RingCentral MVP. RingCentral Contact Center brings together the powerful integration of CCaaS which leverages technology from NICE inContact, Inc., along with RingCentral MVP, enabling an easy collaboration while delivering seamless omnichannel experiences across 30+ digital and voice channels.

**RingCentral Engage Digital.** RingCentral Engage is a cloud digital customer engagement platform that allows enterprises to interact with their customers through a single platform across all digital channels. The platform uses AI-based smart routing engine that enables agents to efficiently manage customer interactions across digital channels including mobile and in-app messaging, several social channels, live chats, and email.

**RingCentral Engage Voice.** Engage Voice is a cloud-based outbound/blended customer engagement platform for small to midsize companies. The platform provides automated dialing capabilities to help accelerate the sales process and reduce time it takes sales teams to reach prospects.

**RingCentral Video.** RingCentral Video is a smart video meeting service, which includes our RCV video and team messaging capabilities. It is an easy-to-use solution that offers high quality and high availability video and audio conferencing, seamlessly integrated with team messaging, file sharing, contact, task, and calendar management. It includes pre-meeting, in-meeting, and post-meeting capabilities, and provides a completely integrated team collaboration capability. RingCentral Video is provided in two editions: Pro, which is a free service, and a paid Pro Plus subscription service which offers a higher number of meeting participants and additional video meeting and administrative management capabilities.

**RingCentral Professional Services.** Professional Services helps guide our customers through the many points of the cloud adoption lifecycle: consultation, UCaaS and CCaaS implementation, VoIP phone system adoption, configuring custom workflows, customer and user onboarding, ongoing support, managed services, and more.

## Segment Reporting

Our organizational structure is a single reportable segment. A discussion of the results of our operations is included in Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations”, and in Part II, Item 8, “Consolidated Financial Statements and Supplementary Data” of this Annual Report of Form 10-K, under Consolidated Financial Statements, which are incorporated herein by reference.

## Our Customers

We have a diverse and growing customer base across a wide range of industries, including financial services, education, healthcare, legal services, real estate, retail, technology, insurance, construction, hospitality, and state and local government, among others. We seek to establish and maintain long-term relationships with our customers. We do not have significant customer concentration and no individual customer accounted for more than 10% of total revenue for the years ended December 31, 2022, 2021, and 2020. We believe that we will not have significant customer concentration in the future.

We sell our solutions to enterprise customers, and small and medium-sized businesses. We define a “customer” as a party that purchases or subscribes to our products and services directly or through our indirect sales channel, which includes resellers and distributors, strategic partners and global service providers. We continuously expand our solution offering globally and believe that there are additional growth opportunities in international markets.

## Marketing, Sales and Support

We use a variety of marketing, sales, and support activities to generate and cultivate ongoing customer demand for our subscriptions, acquire new customers, and engage with our existing customers. We sell globally through both direct and indirect channels, which includes resellers and distributors, strategic partners and global service providers. We provide onboarding implementation services to help our customers set up and configure their newly purchased communications system, as well as ongoing self-service, phone support, online chat support, and training. We also closely track and monitor customer acquisition costs to assess how we are deploying our marketing, sales, and customer support spending.

- **Marketing.** Our marketing efforts include search engine marketing, search engine optimization, affiliates, list buys, shared leads, content leads, appointment setting, radio advertising, online display advertising, sports sponsorships, billboard advertising, tradeshows and events, and other forms of demand generation. We track and measure our marketing costs closely across all channels so that we can acquire customers in a cost-efficient manner.
- **Direct Sales.** We primarily sell our solutions and subscriptions through direct inbound and outbound sales efforts. We have direct sales representatives located in the U.S. and internationally.
- **Indirect Sales.** Our indirect sales channel consists of global and regional networks of resellers and distributors, strategic partners and global and regional service providers. Our indirect sales channels help broaden the adoption of our solutions and enables us to leverage their sales force to sell our services as well as access their customer bases.
- **Customer Support and Services.** While our intuitive and easy-to-use user interface serves to reduce our customers' need for support and services, we provide online chat and phone customer support, as well as post-sale implementation support, as an option to help customers configure and use our solution. We track and measure our customer satisfaction and our support costs closely across all channels to provide a high level of customer service in a cost-efficient manner.

## Research and Development

We believe that continued investment in research and development is critical to expanding our leadership position within the cloud-based business communications, collaboration, and contact center solutions market and is a key element of our culture. We devote the majority of our research and development resources to software development. Our engineering team has significant experience in various disciplines related to our platform, such as voice, video, text, team messaging and collaboration, mobile application development, IP networking and infrastructure, contact center, digital customer engagement, user experience, security, and robust multi-tenant cloud-based system architecture.

Our development methodology, in combination with our SaaS delivery model, allows us to provide new and enhanced capabilities on a regular basis. Based on feedback from our customers and prospects and our review of the broader business communications and SaaS markets, we continuously develop new functionality while maintaining and enhancing our existing solutions. We typically have multiple releases per year, where we constantly improve our solutions and introduce new capabilities and features to make our customers' workforce more productive and to build out the feature set required by larger and global enterprises.

As part of our strategy to expand our technological capabilities, we engage in strategic transactions from time to time. Such strategic acquisitions enable us to complement our technology and skill sets and expand our solution reach.

## Technology and Operations

Our platforms are hosted both in private and public clouds. Our private clouds are built on a highly scalable and flexible infrastructure comprised of commercially available hardware and software components. Our public clouds are built on a platform that allows us to leverage shared components and services, enabling us to rapidly develop new features and functionalities on our existing platform without re-architecting the infrastructure to achieve geographical redundancy and high availability. We believe that both hardware and software components of our platform can be replaced, upgraded or added with minimal or no interruption in service. The system is designed to have no single point-of-failure. For the foreseeable future, we expect to increase our utilization of Amazon's public cloud services.

Our private cloud is served from multiple data centers and third-party co-location facilities located in several cities in the United States and throughout the world. Our data centers are designed to host mission-critical computer and communications systems with redundant, fault-tolerant subsystems, and compartmentalized security zones. We maintain a security program designed to ensure the security and integrity of customer data, protect against security threats or data breaches, and prevent unauthorized access to our customers' data. We limit access to on-demand servers and networks at our production and remote backup facilities.

## Intellectual Property

We rely on a combination of patent, copyright, and trade secret laws in the U.S. and other jurisdictions, as well as license agreements and other contractual protections, to protect our proprietary technology. We also rely on a number of registered and unregistered trademarks to protect our brand. In addition, we seek to protect our intellectual property rights by implementing a policy that requires our employees and independent contractors involved in the development of intellectual property on our behalf to enter into agreements acknowledging that all works or other intellectual property generated or conceived by them on our behalf are our property, and assigning to us any rights, including intellectual property rights, that they may claim or otherwise have in those works or property, to the extent allowable under applicable law.

Our worldwide intellectual property portfolio includes over 940 issued patents, which expire between 2023 and 2041, and over 129 patent applications, pending examination in the U.S. and in foreign jurisdictions, all of which are related to U.S. applications. In general, our patents and patent applications apply to certain aspects of our SaaS and mobile applications and underlying communications infrastructure. We are also a party to various license agreements with third parties that typically grant us the right to use certain third-party technology in conjunction with our solutions and subscriptions. In the future, we may “prune” our patent portfolio by not continuing to renew some of our patents in some jurisdictions or may decide to divest some of our patents.

## Competition

The market for business communications and collaboration solutions is very large, rapidly evolving, complex, fragmented and defined by changing technology, and customer needs. We expect competition to continue to increase in the future. We believe that the principal competitive factors in our market include:

- product features and capabilities;
- system reliability, availability, and performance;
- speed and ease of activation, setup, and configuration;
- ownership and control of the underlying technology;
- open platform;
- incumbency;
- integration with mobile devices;
- brand awareness and recognition;
- simplicity of the pricing model; and
- total cost of ownership.

We believe that we generally compete favorably on the basis of the factors listed above.

We face competition from a broad range of providers of business communications and collaboration solutions. Some of these competitors include:

- traditional on-premise, hardware business communications providers such as Alcatel-Lucent Enterprise, Avaya Inc., Cisco Systems, Inc., Mitel Networks Corporation, NEC Corporation, and Siemens Enterprise Networks, LLC, any of which may now or in the future also host their solutions through the cloud;
- software providers such as Microsoft Corporation and Cisco Systems, Inc. that generally license and/or host their software solutions, and their resellers including major global service providers and cable companies;
- established business communications providers that resell on-premise hardware, software, and hosted solutions, such as Comcast, COX, TMU, Orange, and others, all of whom currently have significantly greater resources than us and now or in the future also may develop and/or host their own or other solutions through the cloud;
- other cloud companies such as 8x8, Inc., Amazon.com, Inc., DialPad, Inc., LogMeIn, Inc, Microsoft Corporation, Nextiva, Inc., Twilio Inc., Vonage Holdings Corp. (acquired by Ericsson), and Zoom Video Communications, Inc.;

- video meeting and collaboration service providers such as Amazon.com, Inc., Apple Inc., Alphabet Inc. (Google G-Suite and Meet), Facebook, Inc., Microsoft Teams, Slack Technologies, Inc. (acquired by Salesforce.com, Inc.), and Zoom Video Communications, Inc.;
- other large internet companies such as Alphabet Inc. (Google Voice), Facebook, Inc., Oracle Corporation, and Salesforce.com, Inc., any of which might launch its own cloud-based business communication services or acquire other cloud-based business communications companies in the future;
- providers of communications platform as a service solutions and messaging software platforms with APIs such as Twilio Inc., Vonage Holdings Corp. (acquired by Ericsson), and Slack Technologies, Inc. (acquired by salesforce.com, inc), on which customers can build diverse solutions by integrating cloud communications into business applications;
- contact center and customer relationship management providers such as Amazon.com, Inc., Aspect Software, Inc., Avaya Inc., Five9, Inc., NICE InContact, Genesys Telecommunications Laboratories, Inc., Serenova, LLC (acquired by Lifesize, Inc.), Talkdesk, Inc., Vonage Holdings Corp. (acquired by Ericsson), Salesforce.com, Inc., Twilio Inc., and Zoom Video Communications, Inc.; and
- digital engagement vendors such as eGain Corporation, LivePerson, Inc., among others named above that may offer similar features.

## **Employees and Human Capital**

We believe that our culture and our workforce are critically important to our success. Our human capital resources objectives include identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. We continuously invest in our global workforce by seeking to create a diverse, inclusive, and safe work environment where our employees can learn, innovate, and deliver their best. We are committed to being inclusive to enable our workforce and customers to succeed.

We invest in developing our talent and creating a superior employee experience. We believe that a highly engaged workforce will continue to drive RingCentral's competitive advantage as an innovative company and will also keep RingCentral as an employer of choice. We believe that our approach to talent development and innovation enables our team members to grow in their current positions and build new skills. We provide learning courses across a broad range of categories such as leadership, inclusion and diversity, technical and compliance, among others. We have periodic employee surveys that allow employees to voice their perceptions of the Company and their work experience.

Our diversity and inclusion initiatives honor the unique background, identity and perspectives of each individual in our organization and we are committed to the success of our workforce and customers. We continue to drive key initiatives in talent acquisition and talent management to focus on increasing the representation of women and underrepresented groups in our global workforce. We received recognition for our initiatives in the area of diversity, equity and inclusiveness, wherein our CEO was recognized as the "Best Company for Women" and "Diversity" by Comparably in 2022. We encourage and support employee resource groups like our LGBTQ+ group, Black employees group and Pan-Asian group, among others. We continue to look for ways to further expand our efforts in the area of diversity, equity and inclusion.

We face competition for highly skilled and technical workforce with experience in our industry and locations where we maintain offices. We strive to provide competitive pay, benefits, and services to attract and retain our employees. Our equity and cash incentive plans are designed to attract, retain and reward employees, in order to increase stockholder value and to enable the success of our Company by motivating such individuals to perform to the best of their abilities and share in the value creation process. We also provide access to a variety of flexible health and wellness programs to our employees.

As of December 31, 2022, we had 3,902 full-time employees located in 17 countries. As of December 31, 2022, approximately 39% of our full-time employees were located outside of the United States. Our geographic diversification enhances our ability to retain and attract highly skilled talent, have an employee base across the globe to be closer to our customers, as well as manage our headcount costs. In 2022 and 2023, we undertook some "reductions in force" ("RIF") that decreased our total number of world-wide employees by approximately ten percent (10%) and we may elect to undertake additional RIFs in the future.

In certain countries in which we operate, we are subject to, and comply with, local labor law requirements, which may automatically make our employees subject to industry-wide collective bargaining agreements. For instance, our employees in France are covered by the Syntec Collective Bargaining Agreement. We are not subject to any other collective bargaining agreements. We believe that our employee relations are good, and we have never experienced any work stoppages.

## Regulatory

As a provider of communication services over the Internet, we are subject to regulation in the U.S. by the FCC. Some of these regulatory obligations include contributing to the Federal Universal Service Fund, Telecommunications Relay Service Fund, and federal programs related to phone number administration; providing access to E-911 services; protecting customer information; and porting phone numbers upon a valid customer request. We are also required to pay state and local 911 fees and contribute to state universal service funds in those states that assess interconnected Voice over Internet Protocol (“VoIP”) services. In addition, we have certified a wholly owned subsidiary as a competitive local exchange carrier in thirty states and the District of Columbia, and registered as an IP-enabled Service Provider in an additional eleven states. This subsidiary, RCLEC, is subject to the same FCC regulations applicable to telecommunications companies, as well as regulation by the public utility commissions in states where the subsidiary provides services. Specific regulations vary on a state-by-state basis, but generally include the requirement for our subsidiary to register or seek certification to provide its services, to file and update tariffs setting forth the terms, conditions and prices for our intrastate services and to comply with various reporting, record-keeping, surcharge collection, and consumer protection requirements.

As we expand internationally, we will be subject to laws and regulations in the countries in which we offer our subscriptions. Regulatory treatment of communications services over the Internet outside the U.S. varies from country to country, and may be more onerous than imposed on our subscriptions in the U.S. In the United Kingdom, for example, our subscriptions are regulated by Ofcom, which, among other things, requires electronic communications services providers such as our company to provide all users access to both 112 (EU-mandated) and 999 (U.K.-mandated) emergency service numbers at no charge. Similarly, in Canada, our subscriptions are regulated by the CRTC, which, among other things, imposes requirements like those in the U.S. related to the provision of E-911 services, in all areas of Canada where the wireline incumbent carrier offers such 911 services. Over the course of 2022, many countries across Europe implemented the EU Electronic Communications Code, clarifying and updating obligations on PSTN-connected voice service providers as well as imposing new requirements on number-independent services such as videoconferencing and team messaging. Additionally, the French regulatory agency, ARCEP, has made major changes to its telephone numbering plan that went into effect in January 2023, allowing for greater nomadic use of services like ours, and prohibiting the sub-assignment of phone numbers to resellers, requiring each provider to obtain numbers directly from ARCEP. Our regulatory obligations in foreign jurisdictions could have a material adverse effect on the use of our subscriptions in international locations.

In the course of providing our services, we collect, store, and process many types of data, including personal data. Moreover, our customers can use our subscriptions to store contact and other personal or identifying information, and to process, transmit, receive, store, and retrieve a variety of communications and messages, including information about their own customers and other contacts. Customers are able, and may be authorized under certain circumstances, to use our subscriptions to transmit, receive, and/or store personal information.

There are a number of federal, state, local, and foreign laws and regulations, such as the European Union’s General Data Protection Regulation (“GDPR”), the California Consumer Privacy Act (“CCPA”), and the California Privacy Rights Act (“CPRPA”), which extended the CCPA, the Virginia Consumer Data Protection Act, the Colorado Privacy Act, the Connecticut Privacy Act and the Utah Consumer Privacy Act, as well as contractual obligations and industry standards, that provide for certain obligations and restrictions with respect to data privacy and security, and the collection, storage, retention, protection, use, processing, transmission, sharing, disclosure, and protection of personal information and other customer data. We expect that with the expansion of our Global MVP solution and sales of our services into new countries, we will become subject to additional data privacy regulations in other countries throughout the world. The scope of these obligations and restrictions is changing, subject to differing interpretations, and may be inconsistent among countries or conflict with other rules, and their status remains uncertain.

As Internet commerce and communication technologies continue to evolve, thereby increasing online service providers’ and network users’ capacity to collect, store, retain, protect, use, process, and transmit large volumes of personal information, increasingly restrictive regulation by federal, state, or foreign agencies becomes more likely.

Regulations that do not directly apply to our business, but which do apply to our customers and partners, can also impact our business. As we expand our business, addressing customer and partner requirements in new jurisdictions and new verticals often requires investment on our part to address regulations that apply to our customers. Globally, these regulations continue to be introduced and to change over time. Such regulations can impact our ability to offer services to various customer segments, and our cost to deliver our services.

See the section entitled “Risk Factors” for more information.

**Available Information**

We make available our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended, free of charge on our website ([ir.ringcentral.com](http://ir.ringcentral.com)), as soon as reasonably practicable after they are electronically filed with or furnished to the Securities and Exchange Commission, or the “SEC”. In addition, 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).

We announce material information to the public about our company, our solutions and services and other matters through a variety of means, including our website ([www.ringcentral.com](http://www.ringcentral.com)), the investor relations section of our website ([ir.ringcentral.com](http://ir.ringcentral.com)), press releases, filings with the SEC, and public conference calls, in order to achieve broad, non-exclusionary distribution of information to the public. We encourage investors and others to review the information we make public in these locations, as such information could be deemed to be material information. Please note that this list may be updated from time to time.

## ITEM 1A. RISK FACTORS

This Report contains forward-looking statements that are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, the risk factors set forth below. The risks and uncertainties described in this Report are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently believe are immaterial may also affect our business. See the section entitled “Special Note Regarding Forward-Looking Statements” of this Annual Report on Form 10-K for a discussion of the forward-looking statements that are qualified by these risk factors. If any of these known or unknown risks or uncertainties actually occurs and have a material adverse effect on us, our business, financial condition and results of operations could be seriously harmed.

### Summary Risk Factors

An investment in our Class A Common Stock involves a high degree of risk, and the following is a summary of key risk factors when considering an investment. It is only a summary. You should read this summary together with the more detailed description of each risk factor contained in the subheadings further below and other risks.

- We have incurred significant losses and negative cash flows in the past and anticipate continuing to incur losses for at least the foreseeable future, and we may therefore not be able to achieve or sustain profitability in the future.
- Our quarterly and annual results of operations have fluctuated in the past and may continue to do so in the future. As a result, we may fail to meet or to exceed the expectations of research analysts or investors, which could cause our stock price to fluctuate.
- We rely on third parties, including third parties in countries outside the U.S. including Russia (previously), Ukraine, Georgia, Philippines, and Spain and Bulgaria, for some of our software development, quality assurance, operations, and customer support, and some of these activities may be further impacted by Russia’s ongoing invasion of Ukraine.
- Global economic conditions may harm our industry, business and results of operations, including relations between the United States and China.
- Our rapid growth and the quickly changing markets in which we operate make it difficult to evaluate our current business and future prospects, which may increase the risk of investing in our stock.
- Our future operating results will rely in part upon the successful execution of our strategic partnerships with Avaya, Amazon, Atos/Unify, ALE, Mitel, Vodafone, DT, Verizon and others, which may not be successful.
- We face intense competition in our markets and may lack sufficient financial or other resources to compete successfully.
- We rely and may in the future rely significantly on our strategic partners, resellers, and global service providers to sell our subscriptions; our failure to effectively develop, manage, and maintain our indirect sales channels could materially and adversely affect our revenues.
- To deliver our subscriptions, we rely on third parties for our network connectivity and for certain of the features in our subscriptions.
- Interruptions or delays in service from our third-party data center hosting facilities and co-location facilities could impair the delivery of our subscriptions, require us to issue credits or pay penalties and harm our business.
- Failures in Internet infrastructure or interference with broadband access could cause current or potential users to believe that our systems are unreliable, possibly leading our customers to switch to our competitors or to avoid using our subscriptions.
- A security incident, such as a cyber-attack, information security breach or denial of service event could delay or interrupt service to our customers, harm our reputation or business, impact our subscriptions, and subject us to significant liability.
- Increased customer turnover, or costs we incur to retain and upsell our customers, could materially and adversely affect our financial performance.
- If we are unable to attract new customers to our subscriptions or upsell to those customers on a cost-effective basis, our business will be materially and adversely affected.
- For as long as the dual class structure of our common stock as contained in our charter documents is in effect, voting control will be concentrated with a limited number of stockholders that held our stock prior to our initial public offering, including primarily our founders and their affiliates, and limiting other stockholders’ ability to influence corporate matters.

- Our Series A Convertible Preferred Stock has rights, preferences and privileges that are not held by, and are preferential to the rights of, our common stockholders, which could adversely affect our liquidity and financial condition.

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

***We have incurred significant losses and negative cash flows in the past and anticipate continuing to incur losses for at least the foreseeable future, and we may therefore not be able to achieve or sustain profitability in the future.***

We have incurred substantial net losses since our inception. Over the past few years, we have spent considerable amounts of time and money to develop new business communications solutions and enhanced versions of our existing business communications solutions to position us for future growth. Additionally, we have incurred substantial losses and expended significant resources upfront to market, promote and sell our solutions and expect to continue to do so in the future. We also expect to continue to invest for future growth, including for advertising, customer acquisition, technology infrastructure, storage capacity, services development and international expansion. In addition, as a public company, we incur significant accounting, legal, and other expenses.

We expect to continue to incur losses for at least the foreseeable future and will have to generate and sustain increased revenues to achieve future profitability. Achieving profitability will require us to increase revenues, manage our cost structure, and avoid significant liabilities. Revenue growth has slowed and in the future, revenues may decline, or we may incur significant losses in the future for a number of possible reasons, including general macroeconomic conditions, increasing competition (including competitive pricing pressures), a decrease in the growth of the markets in which we compete, in particular the SaaS market, or if we fail for any reason to continue to capitalize on growth opportunities. Additionally, we may encounter unforeseen operating expenses, difficulties, complications, delays, service delivery, and quality problems and other unknown factors that may result in losses in future periods, such as our write-down charges relating to our strategic partnership with Avaya. If these losses exceed our expectations or our revenue growth expectations are not met in future periods, our financial performance will be harmed and our stock price could be volatile or decline.

***Our quarterly and annual results of operations have fluctuated in the past and may continue to do so in the future. As a result, we may fail to meet or to exceed the expectations of research analysts or investors, which could cause our stock price to fluctuate.***

Our quarterly and annual results of operations have varied historically from period to period, and we expect that they will continue to fluctuate due to a variety of factors, many of which are outside of our control, including:

- our ability to expand and retain existing customers, resellers, partners, and global service providers, and expand our existing customers' user base, and attract new customers;
- our ability to realize the benefits of our strategic partnerships;
- our ability to introduce new solutions;
- the actions of our competitors, including pricing changes or the introduction of new solutions;
- our ability to effectively manage our growth;
- our ability to successfully penetrate the market for larger businesses;
- the mix of annual and multi-year subscriptions at any given time;
- the timing, cost, and effectiveness of our advertising and marketing efforts;
- the timing, operating cost, and capital expenditures related to the operation, maintenance and expansion of our business;
- our ability to successfully and timely execute on, integrate, and realize the benefits of any acquisition, investment, strategic partnership, or other strategic transaction or partnership we may make or undertake;
- service outages or actual or perceived information security breaches or incidents and any related impact on our reputation;
- our ability to accurately forecast revenues and appropriately plan our expenses;
- our ability to realize our deferred tax assets;



- costs associated with defending and resolving intellectual property infringement and other claims;
- changes in tax laws, regulations, or accounting rules;
- the timing and cost of developing or acquiring technologies, services or businesses, and our ability to successfully manage any such acquisitions;
- the impact of foreign currencies on our business as we continue to expand our business internationally; and
- the impact of worldwide economic, political, industry, and market conditions, including the effects of the ongoing Russian invasion of Ukraine, including international sanctions against Russia, US-China relations, and the continued effects of the global outbreak of COVID-19.

Any one of the factors above, or the cumulative effect of some or all of the factors referred to above, may result in significant fluctuations in our quarterly and annual results of operations. This variability and unpredictability could result in our failure to meet our publicly announced guidance or the expectations of securities analysts or investors for any period, which could cause our stock price to decline. In addition, a significant percentage of our operating expenses is fixed in nature and is based on forecasted revenues trends. Accordingly, in the event of revenue shortfalls, we may not be able to mitigate the negative impact on net income (loss) and margins in the short term. If we fail to meet or exceed the expectations of research analysts or investors, the market price of our shares could fall substantially, and we could face costly lawsuits, including securities class-action suits.

***We may require additional capital to pursue our business objectives and to respond to business opportunities, challenges or unforeseen circumstances. If capital is not available to us, our business, results of operations, and financial condition may be adversely affected.***

We intend to continue to make expenditures and investments to support the growth of our business and may require additional capital to pursue our business objectives and respond to business opportunities, challenges, or unforeseen circumstances, including the need to develop new solutions or enhance our existing solutions, enhance our operating infrastructure, and acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. However, additional funds may not be available when we need them on terms that are acceptable to us, or at all. Volatility in equity capital markets may materially and adversely affect our ability to fund our business through public or private sales of equity securities. Rising interest rates may reduce our access to debt capital. Any debt financing that we secure in the future could involve restrictive covenants, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. In addition, the restrictive covenants in credit facilities we may secure in the future may restrict us from being able to conduct our operations in a manner required for our business and may restrict our growth, which could have an adverse effect on our business, financial condition, or results of operations.

We cannot assure you that we will be able to comply with any such restrictive covenants. In the event that we are unable to comply with these covenants in the future, we would seek an amendment or waiver of the covenants. We cannot assure you that any such waiver or amendment would be granted. In such event, we may be required to repay any or all of our existing borrowings, and we cannot assure you that we will be able to borrow under our existing credit agreements, or obtain alternative funding arrangements on commercially reasonable terms, or at all.

In addition, volatility in the credit markets may have an adverse effect on our ability to obtain debt financing. The conversion of our 0% convertible senior notes due 2025 (the “2025 Notes”) and our 0% convertible senior notes due 2026 (the “2026 Notes”) and, together with the 2025 Notes, the “Notes”) and any future issuances of other equity or any future issuances of equity or convertible debt securities could result in significant dilution to our existing stockholders, and any new equity or convertible debt securities we issue could have rights, preferences, and privileges superior to those of holders of our Class A Common Stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to pursue our business objectives and to respond to business opportunities, challenges, or unforeseen circumstances could be significantly limited, and our business, results of operations, financial condition and prospects could be materially and adversely affected.

***We rely on third parties, including third parties in countries outside the U.S. including Russia (previously), Ukraine, Georgia, Philippines, Spain and Bulgaria, for some of our software development, quality assurance, operations, and customer support, and some of these activities may be further impacted by Russia’s ongoing invasion of Ukraine.***

We currently depend on various third-parties for some of our software development efforts, quality assurance, operations, and customer support services. Specifically, we have outsourced some of our software development and design,

quality assurance, and operations activities to third-party contractors that have employees and consultants located in Georgia, Alicante, Valencia and Malaga, Spain, Sofia, Bulgaria, Odesa, Ukraine, and Manila, the Philippines, and previously, St. Petersburg, Russia. In addition, we outsource a portion of our customer support, inside sales and network operation control functions to third-party contractors located in Manila, the Philippines. Our dependence on third-party contractors creates a number of risks, in particular, the risk that we may not maintain service quality, control, or effective management with respect to these business operations.

Our third-party partner in Ukraine has been impacted by Russia's ongoing invasion of Ukraine. Our former third-party partner in Russia was also forced to cease its operations in St. Petersburg, and a substantial proportion of the affected personnel have relocated to other countries such as Georgia, Spain, and Bulgaria. Currently, our Ukrainian partner is continuing to provide services in Ukraine. However, Russia's ongoing invasion of Ukraine has resulted in reducing or may result in discontinuing our partner operations in Ukraine, and may also delay our product development efforts and/or the release of new features and functionalities. In addition, we have incurred increased costs associated with managing or assisting in relocating our partners' personnel or engaging with alternative third-party contractors or hiring employees outside of Russia and Ukraine, which could negatively impact our operating results and financial condition. We are working with our third-party contractor in Ukraine to relocate their personnel to Spain and other countries; however, we cannot assure you that we can permanently relocate them in a cost-effective manner, or at all. In addition, we cannot assure you that the geographies where we relocate such staff will possess the same level of cost efficiencies as Russia and Ukraine. We do not store or process any customer data in Russia or Ukraine and currently are not dependent on our operations in these locations to continue to provide our core services. We may need to rely on the staff of our third-party partner to assist us with preventing and remedying any cyber-attacks and the ongoing invasion could impact our ability to respond in a timely manner or at all.

In addition, as a result of the ongoing invasion of Ukraine by Russia, the U.S., other North Atlantic Treaty Organization member states, as well as non-member states, have implemented sanctions against Russia and certain Russian banks, enterprises and individuals. These as well as any future additional sanctions and any resulting conflict between Russia, the U.S. and other countries could create global security concerns, increase the risk of cyber-attacks and have a lasting impact on regional and global economies, all of which could have a material adverse effect on our business, financial condition and results of operations.

We also rely on purchased or leased hardware and software licensed from third parties in order to offer our subscriptions, and in some cases, we integrate third-party licensed software components into our platform. Any errors or defects in third-party hardware or software could result in errors or a failure of our subscriptions which could harm our business.

We anticipate that we will continue to depend on our third-party relationships in order to grow our business for the foreseeable future. If we are unsuccessful in maintaining existing and, if needed, establishing new relationships with third parties, our ability to efficiently operate existing services or develop new services and provide adequate customer support could be impaired, and, as a result, our competitive position or our results of operations could suffer.

***The global COVID-19 pandemic could harm our business, financial condition and results of operations.***

The COVID-19 pandemic has continued to impact worldwide economic activity and financial markets. After closing our offices and restricting travel at the beginning of the pandemic, we reopened our offices to employees worldwide in 2022 and eased our travel restrictions. We continue to monitor the situation and may adjust our current policies as more information and public health guidance becomes available. This could again result in temporarily suspending travel and restricting the ability to do business in person, which could negatively affect our customer success efforts, sales and marketing efforts, challenge our ability to enter into customer and other commercial contracts in a timely manner and our ability to source, assess, negotiate, and successfully implement and execute on, and realize the benefits of, acquisitions, investments, strategic partnerships and other strategic transactions, slow down our recruiting efforts, or create operational or other challenges, any of which could harm our business, financial condition and results of operations. In addition, the COVID-19 pandemic has and may continue to disrupt the operations of our customers, resellers and other channel partners, strategic partners, suppliers and other third-party providers, which could continue to negatively impact our business, financial condition and results of operations. In addition, the rapid spread of variants of the virus and the ongoing pandemic and preventative measures taken worldwide has and could continue to adversely affect economies and financial markets globally in the future, which could decrease technology spending and continue to adversely affect demand for our solutions and harm our business. The full extent to which the COVID-19 pandemic may impact our financial condition or results of operations remains uncertain.

***Global economic conditions may harm our industry, business and results of operations, including relations between the United States and China.***

We operate globally and as a result our business, revenues and profitability are impacted by global macroeconomic conditions. The success of our activities is affected by general economic and market conditions, including, among others, inflation rate fluctuations, interest rates, supply chain constraints, lower consumer confidence, volatile equity capital markets, tax rates, economic uncertainty, political instability (including the potential of the U.S. government to default on the federal debt), changes in laws, and trade barriers and sanctions. Recently, increases in inflation and interest rates in the US have increased to levels not seen in several years, which have increased and may continue to increase our operating costs. In addition, such economic volatility could adversely affect our business, financial condition, results of operations and cash flows, and future market disruptions could negatively impact us. Further, any U.S. federal government shutdown resulting from failing to pass budget appropriations, adopt continuing funding resolutions, or raise the debt ceiling, and other budgetary decisions limiting or delaying government spending, may negatively impact U.S. or global economic conditions, including corporate and consumer spending, and liquidity of capital markets. Unfavorable economic conditions could increase our operating costs and, because our typical contracts with customers lock in our price for a few years, our profitability could be negatively affected. Geopolitical destabilization could impact global currency exchange rates, supply chains, trade and movement of resources, the price of commodities such as energy, as well as demand for our products and services, which may adversely affect the technology spending of our customers and potential customers.

Some of our international agreements provide for payment denominated in local currencies, and the majority of our local costs are denominated in local currencies. Fluctuations in the value of the U.S. dollar versus foreign currencies may impact our operating results when translated into U.S. dollars. Thus, our results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the Euro, British Pound Sterling, Chinese Yuan, and Canadian Dollar, and may be adversely affected in the future due to changes in foreign currency exchange rates. While we have limited currency exchange exposure to the Russian and Ukrainian currencies, we expect exchange rates with respect to these currencies to be volatile and other exchange rates may also be more volatile than normal as a result of the Russian invasion of Ukraine and related events. Changes in exchange rates have and may continue to negatively affect our revenues, expenses, and other operating results as expressed in U.S. dollars in the future.

***Our rapid growth and the quickly changing markets in which we operate make it difficult to evaluate our current business and future prospects, which may increase the risk of investing in our stock.***

We have grown rapidly since 2009, when we introduced RingCentral MVP, our flagship product. We have encountered and expect to continue to encounter risks and uncertainties frequently experienced by growing companies in rapidly changing markets. If our assumptions regarding these uncertainties are incorrect or change in reaction to changes in our markets, or if we do not manage or address these risks successfully, our results of operations could differ materially from our expectations, and our business could suffer.

***Growth may place significant demands on our management and our infrastructure.***

We continue to experience substantial growth in our business. This growth has placed and may continue to place significant demands on our management, organizational structure, and our operational and financial infrastructure. As our operations grow in size, scope, and complexity, we will need to increase our sales and marketing efforts and add additional sales and marketing personnel in various regions worldwide and improve and upgrade our systems and infrastructure to attract, service, and retain an increasing number of customers. For example, we expect the volume of simultaneous calls to increase significantly as our customer base grows. Our network hardware and software may not be able to accommodate this additional simultaneous call volume. The expansion of our systems and infrastructure will require us to commit substantial financial, operational, and technical resources in advance of an increase in the volume of business, with no assurance that the volume of business will increase. Any such additional capital investments will increase our cost base.

Continued growth could also strain our ability to maintain reliable service levels for our customers, resellers, and global service providers, develop and improve our operational, financial and management controls, enhance our billing and reporting systems and procedures and recruit, train and retain highly skilled personnel. In addition, our existing systems, processes, and controls may not prevent or detect all errors, omissions, or fraud. We may also experience difficulties in managing improvements to our systems, processes, and controls or in connection with third-party software licensed to help us with such improvements. Any future growth, particularly as we continue to expand internationally, would add complexity to our organization and require effective communication and coordination throughout our organization. To manage any future growth effectively, we must continue to improve and expand our information technology and financial, operating, security and

administrative systems and controls, and our business continuity and disaster recovery plans and processes. Additionally, our productivity and the quality of our solutions and services may be adversely affected if we do not integrate and train our new employees quickly and effectively. If we fail to achieve the necessary level of efficiency in our organization as we grow, our business, results of operations and financial condition could be materially and adversely affected.

***Our future operating results will rely in part upon the successful execution of our strategic partnerships with Avaya, Amazon, Atos/Unify, ALE, Mitel, Vodafone, DT, Verizon and others, which may not be successful.***

A strategic partnership between two independent businesses is a complex, costly, and time-consuming process that requires significant management attention and resources. Realizing the benefits of our strategic partnerships, particularly our relationships with Avaya and its subsidiaries, Atos and its subsidiaries, including Unify, Mitel, Vodafone and its subsidiaries, Deutsche, and its subsidiaries, and Verizon and its subsidiaries will depend on a variety of factors, including our ability to work with our strategic partners to develop, market and sell our MVP and co-branded solutions, such as Avaya Cloud Office by RingCentral (“ACO”), and Unify Office by RingCentral (“UO”), and our other offerings. Setting up and maintaining the operations and processes of these strategic partnerships may cause us to incur significant costs, disrupt our business and, if implemented ineffectively, would limit the expected benefits to us. The failure to successfully and timely implement and operate our strategic partnerships could harm our ability to realize the anticipated benefits of these partnerships and could adversely affect our results of operations. For example, on December 13, 2022, Avaya filed a Form 8-K disclosing ongoing discussions regarding one or more potential financings, refinancings, recapitalizations, reorganizations, restructurings or investment transactions. In light of public disclosures about the likelihood of Avaya’s financial restructuring via Chapter 11, we recorded a non-cash asset write-down charge of \$279.3 million for the year ended December 31, 2022, out of which \$21.7 million of this balance was accrued interest and was recorded in other income (expense) in the Consolidated Statement of Operations. Refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates” and Refer to Note 5 – *Strategic Partnerships and Asset Acquisitions* in the accompanying notes to the consolidated financial statements included in Part II, Item 8, in this Annual Report on Form 10-K for further information regarding our assessment of the recoverability of our prepaid sales commission balances with Avaya. Further, on February 14, 2023, Avaya initiated an expedited, prepackaged financial restructuring via Chapter 11 with the support of certain of its financial stakeholders, including us. In connection therewith, we entered into a new extended and expanded partnership arrangement with Avaya pursuant to which, among other things, ACO remains Avaya’s exclusive UCaaS offering and Avaya agreed to certain minimum volume commitments. As part of the new agreements, we and Avaya agreed to a revised go-to-market incentive structure intended to drive migration of customers to ACO.

***We face intense competition in our markets and may lack sufficient financial or other resources to compete successfully.***

The cloud-based business communications and collaboration solutions industry is competitive, and we expect competition to increase in the future. We face intense competition from other providers of business communications and collaboration systems and solutions.

Our competitors include traditional on-premise, hardware business communications providers such as ALE, Avaya, Cisco Systems, Inc., Mitel, NEC Corporation, Siemens Enterprise Networks, LLC, their resellers, and others, as well as companies such as Microsoft Corporation and Cisco Systems, Inc., and their resellers that license their software. In addition, certain of our global service providers and strategic partners, such as AT&T, BT, TELUS, Vodafone, DT, Verizon, Amazon, Avaya, Atos, ALE, and Mitel sell or are expected to sell our solutions, but they are also competitors for business communications. These companies have or may have significantly greater resources than us and currently, or may in the future, develop and/or host their own or other solutions through the cloud. Such competitors may not be successful in or cease marketing and selling our solutions to their customers and ultimately be able to transition some or all of those customers onto their competing solutions, which could materially and adversely affect our revenues and growth. We also face competition from other cloud companies and established communications providers that resell on-premise hardware, software, and hosted solutions, such as 8x8, Inc., Amazon.com, Inc., Dialpad, Inc., LogMeIn, Inc, Microsoft Corporation, Nextiva, Inc., Twilio Inc., Vonage Holdings Corp., and Zoom Video Communications, Inc., which has introduced a voice solution. Established communications providers, such as AT&T, Verizon Communications Inc., Sprint Corporation and Comcast Corporation in the U.S., TELUS and others in Canada, and BT, Vodafone Group plc, and others in the U.K., that resell on-premise hardware, software, and hosted solutions, compete with us in business communications and currently, or may in the future, develop and/or host their own cloud solutions. We may also face competition from other large Internet companies, such as Alphabet Inc. (Google Voice), Facebook, Inc., Oracle Corporation, and Salesforce.com, Inc., any of which might launch its own cloud-based business communications services or acquire other cloud-based business communications companies in the future. We also compete against providers of communications platform as a service solutions and messaging software platforms with APIs such as Twilio Inc., Vonage Holdings Corp., and Slack Technologies, Inc. (acquired by Salesforce, Inc.), on which customers can

build diverse solutions by integrating cloud communications into business applications. We face competition with respect to this solution from contact center and customer relationship management providers such as Amazon.com, Inc., Avaya, Five9, Inc., NICE InContact, Genesys Telecommunications Laboratories, Inc., Serenova, LLC (acquired by Lifesize, Inc.), Talkdesk, Inc., Vonage Holdings Corp., Salesforce.com, Inc., and Twilio Inc. We also face competition from digital engagement vendors such as eGain Corporation, LivePerson, Inc., among others named above that may offer similar features.

Many of our current and potential competitors have longer operating histories, significantly greater resources and name recognition, more diversified offerings, and larger customer bases than we have. As a result, these competitors may have greater credibility with our existing and potential customers and may be better able to withstand an extended period of downward pricing pressure. In addition, certain of our competitors have partnered with, or been acquired by, and may in the future partner with or acquire, other competitors to offer services, leveraging their collective competitive positions, which makes it more difficult to compete with them and could significantly and adversely affect our results of operations. Demand for our platform is also sensitive to price. Many factors, including our marketing, user acquisition and technology costs, and our current and future competitors' pricing and marketing strategies, can significantly affect our pricing strategies. Our competitors may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion and sale of their services than we can to ours. Some of these service providers have in the past and may choose in the future to sacrifice revenues in order to gain market share by offering their services at lower prices or for free, or offering alternative pricing models, such as "freemium" pricing, in which a basic offering is provided for free with advanced features provided for a fee, on the services they offer. Our competitors may also offer bundled service arrangements offering a more complete service offering, despite the technical merits or advantages of our subscriptions. Competition could result in a decrease to our prices, slow our growth, increase our customer turnover, reduce our sales, or decrease our market share.

***We rely and may in the future rely significantly on our strategic partners, resellers, and global service providers to sell our subscriptions; our failure to effectively develop, manage, and maintain our indirect sales channels could materially and adversely affect our revenues.***

Our future success depends on our continued ability to establish and maintain a network of channel relationships, and we expect that we will need to expand our network in order to support and expand our historical base of smaller enterprises as well as attract and support larger customers and expand into international markets. An increasing portion of our revenues are derived from our network of sales agents and resellers, which we refer to collectively as resellers, many of which sell or may in the future decide to sell their own services or services from other business communications providers. We generally do not have long-term contracts with these resellers, and the loss of or reduction in sales through these third parties could materially reduce our revenues. Our competitors may in some cases be effective in causing our current or potential resellers to favor their services or prevent or reduce sales of our subscriptions. Furthermore, while AT&T, BT, TELUS, Vodafone, DT, Verizon, Avaya, Atos (through its subsidiary Unify), ALE, and Mitel also sell our solutions on an exclusive or non-exclusive basis, they are also competitors for business communications. These companies have significantly greater resources than us and currently, or may in the future, develop and/or host their own or other solutions through the cloud. Such competitors may cease marketing or selling our solutions to their customers and ultimately be able to transition some or all of those customers onto their competing solutions, which could materially and adversely affect our revenues and growth.

We have also entered into certain agreements for strategic partnerships with Avaya, Amazon, Atos, ALE, Mitel, Vodafone, DT and Verizon to sell certain of our solutions. Avaya introduced the ACO solution at the end of the first quarter of 2020, and Atos and Unify introduced the Unify Office solution during the third quarter of 2020; however, there can be no guarantee that Avaya, Atos, Unify, Mitel, Vodafone, DT, Verizon and/or any of their respective channel partners will be successful in marketing or selling our solutions or that they will not cease marketing or selling our solutions in the future. Further, certain partners have failed in the past, and may fail in the future, to meet their minimum contractual seat and/or revenue commitments, including recoupment of advance payments. The Company has in the past, and may in the future, renegotiate the terms of its strategic partnership agreements, including converting strategic partners from exclusive to non-exclusive partners. For example, on February 14, 2023, Avaya initiated an expedited, prepackaged financial restructuring via Chapter 11 with the support of certain of its financial stakeholders, including us. In connection therewith, we entered into a new extended and expanded partnership arrangement with Avaya pursuant to which, among other things, ACO remains Avaya's exclusive UCaaS offering and Avaya agreed to certain minimum volume commitments. As part of the new agreements, we and Avaya agreed to a revised go-to-market incentive structure intended to drive migration of customers to ACO.

If our strategic partners and global service providers and/or any of their respective channel partners are not successful in marketing and selling our solutions or cease to market and sell our solutions, our revenues and growth could be significantly and adversely affected. If we fail to maintain relationships with our resellers and other channel partners, global service providers and strategic partners or fail to develop new and expanded relationships in existing or new markets, or if our networks

of indirect channel relationships are not successful in their sales efforts, sales of our subscriptions may decrease and our operating results would suffer. In addition, we may not be successful in managing, training, and providing appropriate incentives to our existing resellers and other channel partners, global service providers and strategic partners, and they may not be able to commit adequate resources in order to successfully sell our solutions.

***To deliver our subscriptions, we rely on third parties for our network connectivity and for certain of the features in our subscriptions.***

We currently use the infrastructure of third-party network service providers, including CenturyLink, Inc. and Bandwidth.com, Inc. in North America and several others internationally, to deliver our subscriptions over their networks. Our third-party network service providers provide access to their Internet protocol (“IP”) networks and public switched telephone networks, and provide call termination and origination services, including 911 emergency calling in the U.S. and equivalent services internationally, and local number portability for our customers. We expect that we will continue to rely heavily on third-party network service providers to provide these subscriptions for the foreseeable future.

Through our wholly-owned local exchange carrier subsidiary, RCLEC, Inc. (“RCLEC”), we also obtain certain connectivity and network services directly from incumbent local exchange carriers (“ILECS”) and from other competitive local exchange carriers (“CLECs”) in certain geographic markets at lower prices than we pay for such services through third-party network service providers. However, RCLEC also uses the infrastructure of third-party network service providers to deliver its services and the ILECs may favor themselves and their affiliates may not provide network services to us at lower prices than we could obtain through third-party CLECs, or at all. If we are unable to continue to reduce our pricing as a result of obtaining network services through our subsidiary, we may be forced to rely on other third-party network service providers and be unable to effectively lower our cost of service. Historically, our reliance on third-party networks has reduced our operating flexibility and ability to make timely service changes and control quality of service, and we expect that this will continue for the foreseeable future. If any of these network service providers stop providing us with access to their infrastructure, fail to provide these services to us on a cost-effective basis or at reasonable levels of quality and security, cease operations, or otherwise terminate these services, the delay caused by qualifying and switching to another third-party network service provider, if one is available, could have a material adverse effect on our business and results of operations.

In addition, we currently use and may in the future use third-party service providers to deliver certain features of our subscriptions. For example, although we introduced our own video and web conferencing solution in April 2020 and have migrated many of our customers to RingCentral Video, there are still several existing customers who continue to use Zoom Video Communications, Inc. for HD video and web conferencing and screen sharing features, Bandwidth.com for texting capabilities, and NICE inContact, Inc. for contact center capabilities. In the future, we may not continue to have long-term contracts with any or all of these third-party providers. Any of these service providers could elect or attempt to stop providing us with access to their services or our contracts with these third-party providers may terminate, expire, or be breached. If any of these service providers ceases to provide us with their services, fails to provide these services to us on a cost-effective basis or at reasonable levels of quality and security, ceases operations, or otherwise terminates or discontinues these services, the delay caused by qualifying and switching to another third-party service provider, if one is available, or building a proprietary replacement solution could have a material adverse effect on our business and results of operations. U.S. mobile carriers are now requiring businesses using SMS on over-the-top providers such as RingCentral to register with The Campaign Registry (TCR), to ensure text messages are compliant with wireless carrier guidelines, as well as to reduce spam. These new rules affect our customers, and we are building integrations with TCR to complete those registrations on our customers' behalf. In the future, customers who are not registered with TCR may not be able to send or receive SMS using our service. Furthermore, we are no longer offering or selling RingCentral Meetings to new customers and are instead offering our own RingCentral Video solution, and, in light of our settlement with Zoom, we believe that we will be able to migrate all or substantially all of our customers to RingCentral Video. Nevertheless, it is possible that not all existing customers will migrate to RingCentral Video. Therefore, our inability to offer and sell RingCentral Meetings, or to successfully transfer existing customers to our own solution, may cause some prospective customers not to purchase our services and/or existing customers not to renew their contracts for our services or to renew for a fewer number of seats.

Finally, if problems occur with any of these third-party network or service providers, it may cause errors or poor call quality in our subscriptions, and we could encounter difficulty identifying the source of the problem. The occurrence of errors or poor call quality in our subscriptions, whether caused by our systems or a third-party network or service provider, may result in the loss of our existing customers, delay or loss of market acceptance of our subscriptions, termination of our relationships and agreements with our resellers or global service providers, or liability for failure to meet service level agreements, and may seriously harm our business and results of operations.

***We rely on third-party software that may be difficult to replace or which could cause errors or failures of our subscriptions.***

We rely on software licensed from certain third parties in order to offer our solutions. In some cases, we integrate third-party licensed software components into our platform. This software may not continue to be available at reasonable prices or on commercially reasonable terms, or at all. Any loss of the right to use any of this software could significantly increase our expenses and otherwise result in delays in the provisioning of our solutions until equivalent technology is either developed by us, or, if available, is identified, obtained, and integrated. Any errors or defects in third-party software could result in errors or a failure of our solutions, which could harm our business.

***Interruptions or delays in service from our third-party data center hosting facilities and co-location facilities could impair the delivery of our subscriptions, require us to issue credits or pay penalties and harm our business.***

We currently serve our North American customers from geographically disparate data center hosting facilities in North America, where we lease space from Equinix, Inc., and other providers, and we serve our European customers from third-party data center hosting facilities in Europe. We also use third-party co-location facilities located in various international regions to serve our customers in these regions. Certain of our solutions are hosted by third-party data center facilities including Amazon Web Services, Inc. (“AWS”), NICE inContact, Inc., and Google Cloud Platform. In addition, RCLEC uses third-party co-location facilities to provide us with network services at several locations. Damage to, or failure of, these facilities, the communications network providers with whom we or they contract, or with the systems by which our communications providers allocate capacity among their customers, including us, or software errors, have in the past and could in the future result in interruptions in our services. Additionally, in connection with the addition of new data centers or expansion or consolidation of our existing data center facilities, we may move or transfer our data and our customers’ data to other data centers. Despite precautions that we take during this process, any unsuccessful data transfers may impair or cause disruptions in the delivery of our subscriptions. Interruptions in our subscriptions may reduce our revenues, may require us to issue credits or pay penalties, subject us to claims and litigation, cause customers to terminate their subscriptions and adversely affect our renewal rates and our ability to attract new customers. Our ability to attract and retain customers depends on our ability to provide customers with a highly reliable subscription and even minor interruptions in our subscriptions could harm our brand and reputation and have a material adverse effect on our business.

As part of our current disaster recovery arrangements, our North American and European infrastructure and our North American and European customers’ data is currently replicated in near real-time at data center facilities in the U.S. and Europe, respectively. We do not control the operation of these facilities or of our other data center facilities or RCLEC’s co-location facilities, and they are vulnerable to damage or interruption from earthquakes, floods, fires, power loss, telecommunications failures, and similar events. They may also be subject to human error or to break-ins, sabotage, acts of vandalism, and similar misconduct.

Despite precautions taken at these facilities, the occurrence of a natural disaster, public health crisis, such as the COVID-19 pandemic, human error, cybersecurity incident, including ransomware or denial-of-service attack, an act of terrorism or other unanticipated problems at these facilities could result in lengthy interruptions in our subscriptions. Even with the disaster recovery arrangements in place, our subscriptions could be interrupted.

We may also be required to transfer our servers to new data center facilities in the event that we are unable to renew our leases on acceptable terms, if at all, or the owners of the facilities decide to close their facilities, and we may incur significant costs and possible subscription interruption in connection with doing so. In addition, any financial difficulties, such as bankruptcy or foreclosure, faced by our third-party data center operators, or any of the service providers with which we or they contract may have negative effects on our business, the nature and extent of which are difficult to predict. Additionally, if our data centers are unable to keep up with our increasing needs for capacity, our ability to grow our business could be materially and adversely impacted.

***Failures in Internet infrastructure or interference with broadband access could cause current or potential users to believe that our systems are unreliable, possibly leading our customers to switch to our competitors or to avoid using our subscriptions.***

Unlike traditional communications services, our subscriptions depend on our customers’ high-speed broadband access to the Internet. Increasing numbers of users and increasing bandwidth requirements may degrade the performance of our services and applications due to capacity constraints and other Internet infrastructure limitations. As our customer base grows and their usage of our services increases, we will be required to make additional investments in network capacity to maintain adequate data transmission speeds, the availability of which may be limited, or the cost of which may be on terms unacceptable

to us. If adequate capacity is not available to us as our customers' usage increases, our network may be unable to achieve or maintain sufficiently high reliability or performance. In addition, if Internet access service providers have outages or deteriorations in their quality of service, our customers will not have access to our subscriptions or may experience a decrease in the quality of our services. Frequent or persistent interruptions could cause current or potential users to believe that our systems or services are unreliable, leading them to switch to our competitors or to avoid our subscriptions, and could permanently harm our reputation and brands.

In addition, users who access our subscriptions and applications through mobile devices, such as smartphones and tablets, must have a high-speed connection, such as Wi-Fi®, 4G, 5G, or LTE, to use our services and applications. Currently, this access is provided by companies that have significant and increasing market power in the broadband and Internet access marketplace, including incumbent phone companies, cable companies, and wireless companies. Some of these providers offer solutions and subscriptions that directly compete with our own offerings, which can potentially give them a competitive advantage. Also, these providers could take measures that degrade, disrupt or increase the cost of user access to third-party services, including our subscriptions, by restricting or prohibiting the use of their infrastructure to support or facilitate third-party services or by charging increased fees to third parties or the users of third-party services, any of which would make our subscriptions less attractive to users, and reduce our revenues.

***Interruptions in our services caused by undetected errors, failures, or bugs in our subscriptions could harm our reputation, result in significant costs to us, and impair our ability to sell our subscriptions.***

Our subscriptions may have errors or defects that customers identify after they begin using them that could result in unanticipated interruptions of service. Internet-based services frequently contain undetected errors and bugs when first introduced or when new versions or enhancements are released. While the substantial majority of our customers are small and medium-sized businesses, the use of our subscriptions in complicated, large-scale network environments may increase our exposure to undetected errors, failures, or bugs in our subscriptions. Although we test our subscriptions to detect and correct errors and defects before their general release, we have, from time to time, experienced significant interruptions in our subscriptions as a result of such errors or defects and may experience future interruptions of service if we fail to detect and correct these errors and defects. The costs incurred in correcting such defects or errors may be substantial and could harm our results of operations. In addition, we rely on hardware purchased or leased and software licensed from third parties to offer our subscriptions.

Any defects in, or unavailability of, our or third-party software or hardware that cause interruptions of our subscriptions could, among other things:

- cause a reduction in revenues or a delay in market acceptance of our subscriptions;
- require us to pay penalties or issue credits or refunds to our customers, resellers, or global service providers, or expose us to claims for damages;
- cause us to lose existing customers and make it more difficult to attract new customers;
- divert our development resources or require us to make extensive changes to our software, which would increase our expenses and slow innovation;
- increase our technical support costs; and
- harm our reputation and brand.

***A security incident, such as a cyber-attack, information security breach or denial of service event could delay or interrupt service to our customers, harm our reputation or business, impact our subscriptions, and subject us to significant liability.***

Our operations depend on our ability to protect our production and corporate information technology services from interruption or damage from cyber-attacks, denial-of-service events, unauthorized entry, computer malware or other security incidents, including events beyond our control. We have, from time to time, been subject to communications fraud and cyber-attacks by malicious actors, and denial of service events, and we may be subject to similar attacks in the future, particularly as the frequency and sophistication of cyber-attacks increases. For example, an increase in cyber-attack activity, such as ransomware and phishing attacks, has been observed in connection with Russia's invasion of Ukraine. We cannot assure you that our backup systems, regular data backups, security controls and other procedures currently in place, or that may be in place in the future, will be adequate to prevent significant damage, system failure, service outages, data breach, data loss, unauthorized access, loss of use, interruption, or increased charges from our technology vendors.



Also, our subscriptions are web-based. The amount of data we store for our customers and users increases as our business grows. We host services, which includes hosting customer data, both in co-located data centers and in multiple public cloud services. Our solutions allow users to store files, tasks, calendar events, messages and other data indefinitely on our services or as may be directed by our customers, although we have begun instituting in our customer agreements a provision that customer content and certain other customer data will be deleted upon termination of the agreements. We also maintain sensitive data related to our technology and business, and that of our employees, strategic partners, and customers, including intellectual property, proprietary business information and personally identifiable information (also called personal data) on our own systems and in multiple vendors' cloud services. As a result of maintaining larger volumes of data and user files and/or as a result of our continued movement up market, or movement into new customer segments and acquisition of larger and more recognized customers, we may become more of a target for hackers, nation states and other malicious actors.

In addition, we use third-party vendors who, in some cases, have access to our data and our employees', partners', and customers' data. We employ layered security measures and have a means of working with third parties who report vulnerabilities to us. Despite the implementation of security measures by us or our vendors, our computing devices, infrastructure, or networks, or our vendors' computing devices, infrastructure, or networks, may be vulnerable to hackers, computer viruses, worms, ransomware, other malicious software programs, employee theft or misuse, phishing, denial-of-service attacks, or similar disruptive problems that are caused by or through a security weakness or vulnerability in our or our vendors' infrastructure, network, or business practices or our or our vendors' customers, employees, business partners, consultants, or other Internet users who attempt to invade our or our vendors' corporate and personal computers, tablets, mobile devices, software, data networks, or voice networks. If there is a security weakness or vulnerability in our, our vendors', or our customers' infrastructure, networks, or business practices that is successfully targeted, we could face increased costs, liability claims, including contractual liability claims relating to security obligations in agreements with our partners and our customers, fines, claims, investigations and other proceedings, reduced revenue, or harm to our reputation or competitive position. In addition, even if not targeted, in strengthening our security controls or in remediating security vulnerabilities, we could incur increased costs and capital expenditures.

We have implemented remote working protocols and offer work-issued devices to certain employees, but the actions of employees while working remotely may have a greater effect on the security of our infrastructure, networks, and the information, including personally identifiable information, we process, including for example by increasing the risk of compromise to systems or data arising from employees' combined personal and private use of devices, accessing our networks or information using wireless networks that we do not control, or the ability to transmit or store company-controlled information outside of our secured network. Although many of these risks are not unique to the remote working environment, they have been heightened by the dramatic increase in the numbers of our employees who have been and are continuing to work from home as a result of the COVID-19 pandemic. We also allow a substantial number of our employees that are designated "hybrid" to work from home about fifty-percent (50%) of the time. Our employees' or third parties' intentional, unintentional, or inadvertent actions may increase our vulnerability or expose us to security threats, such as ransomware, other malware and phishing attacks, and we may remain responsible for unauthorized access to, loss, alteration, destruction, acquisition, disclosure or other processing of information we or our vendors, business partners, or consultants process or otherwise maintain, even if the security measures used to protect such information comply with applicable laws, regulations and other actual or asserted obligations. Additionally, due to political uncertainty and military actions associated with Russia's invasion of Ukraine, we and our vendors, business partners, and consultants are vulnerable to heightened risks of cyber-attacks, from or affiliated with nation-state actors, including attacks that could materially disrupt our systems and operations, supply chain, and ability to produce, sell and distribute our services. Also, cyber-attacks, including on the supply chain, continue to increase in frequency and magnitude, and we cannot provide assurances that our preventative efforts will be successful.

We rely on encryption and authentication technology to ensure secure transmission of and access to confidential information, including customer credit card numbers, debit card numbers, direct debit information, customer communications, and files uploaded by our customers. Advances in computer capabilities, new discoveries in the field of cryptography, discovery of software bugs or vulnerabilities, discovery of hardware bugs or vulnerabilities, social engineering activities, or other developments may result in a compromise or breach of the technology we use to protect our data and our customer data, or of the data itself.

Additionally, third parties have attempted in the past, and may attempt in the future, to induce domestic and international employees, consultants, or customers into disclosing sensitive information, such as user names, provisioning data, customer proprietary network information ("CPNI") or other information in order to gain access to our customers' user accounts or data, or to our data. CPNI includes information such as the phone numbers called by a customer, the frequency, duration, and timing of such calls, and any services purchased by the consumer, such as call waiting, call forwarding, and caller ID, in addition to other information that may appear on a customer's bill. Third parties may also attempt to induce employees, consultants, or customers into disclosing information regarding our and our customers' intellectual property, personal data and

other confidential business information. In addition, the techniques used to obtain unauthorized access, to perform hacking, phishing and social engineering, or to sabotage systems change and evolve frequently and may not be recognized until launched against a target, may be new and previously unknown or little-known, or may not be detected or understood until well after such actions are conducted. We may be unable to anticipate these techniques or to implement adequate preventative measures, and any security breach or other incident may take longer than expected to remediate or otherwise address. Any system failure or security breach or incident that causes interruptions or data loss in our operations or in the computer systems of our customers or leads to the misappropriation of our or our customers' confidential or personal information could result in significant liability to us, loss of our intellectual property, cause our subscriptions to be perceived as not being secure, cause considerable harm to us and our reputation (including requiring notification to customers, regulators, or the media), and deter current and potential customers from using our subscriptions. Any of these events could have a material adverse effect on our business, results of operations, and financial condition.

It is critical to our business that our information and our employees', strategic partners', and customers' sensitive information remains secure and that our customers perceive that this information is secure. An information security incident could result in unauthorized access to, loss of, or unauthorized disclosure of such information. A cybersecurity breach or incident could expose us to litigation, indemnity obligations, government investigations, contractual liability, and other possible liabilities. Additionally, a cyber-attack or other information security incident, whether actual or perceived, could result in negative publicity, which could harm our reputation and reduce our customers' confidence in the effectiveness of our solutions, which could materially and adversely affect our business and operating results. A breach of our security systems could also expose us to increased costs, including remediation costs, disruption of operations, or increased cybersecurity protection costs, that may have a material adverse effect on our business. In addition, a cybersecurity breach or incident of our customers' systems can also result in exposure of their authentication credentials, unauthorized access to their accounts, exposure of their account information and data (including CPNI), and fraudulent calls on their accounts, which can subsequently have similar actual or perceived impacts to us as described above. A cybersecurity breach or incident of our partners' or vendors' systems can result in similar actual or perceived impacts.

While we maintain cybersecurity insurance, our insurance may be insufficient to cover all liabilities incurred by privacy or security incidents. We also cannot be certain that our insurance coverage will be adequate for data handling or data security liabilities actually incurred, that insurance will continue to be available to us on economically reasonable terms, or at all, or that an insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, including our financial condition, operating results, and reputation.

Laws, regulations, and enforcement actions relating to security and privacy of information continue to evolve. With respect to security, we are closely monitoring the development of rules and guidance that may apply to us, including, for example, pursuant to the Cyber Incident Reporting for Critical Infrastructure Act of 2022. We have incurred and expect to continue to incur significant expenses to prevent security incidents. It is possible that, in order to support changes to applicable laws and to support our expansion of sales into new geographic areas or into new industry segments, we will need to increase or change our cybersecurity systems and expenditures. Further, it is possible that changes to laws and regulations relating to security and privacy may make it more expensive to operate in certain jurisdictions and may increase the risk of our non-compliance with such changing laws and regulations.

***Potential problems with our information systems could interfere with our business and operations.***

We rely on our information systems and those of third parties for processing customer orders, distribution of our subscriptions, billing our customers, processing credit card transactions, customer relationship management, supporting financial planning and analysis, accounting functions and financial statement preparation, and otherwise running our business. Information systems may experience interruptions, including interruptions of related services from third-party providers, which may be beyond our control. Such business interruptions could cause us to fail to meet customer requirements. All information systems, both internal and external, are potentially vulnerable to damage or interruption from a variety of sources, including without limitation, computer viruses, security breaches and incidents, energy blackouts, natural disasters, terrorism, war, telecommunication failures, employee or other theft, and third-party provider failures. In addition, since telecommunications billing is inherently complex and requires highly sophisticated information systems to administer, our internally developed billing system, which is currently being implemented, may experience errors or we may improperly operate the system, which could result in the system incorrectly calculating the fees owed by our customers for our subscriptions or related taxes and administrative fees. Any such errors in our customer billing could harm our reputation and cause us to violate truth in billing laws and regulations. Our current internally developed billing system requires us to process an increasing number of invoices

manually, which could result in billing errors. Any errors or disruption in our information systems and those of the third parties upon which we rely could have a significant impact on our business. In addition, we may implement further and enhanced information systems in the future to meet the demands resulting from our growth and to provide additional capabilities and functionality. The implementation of new systems and enhancements is frequently disruptive to the underlying business of an enterprise, and can be time-consuming and expensive, increase management responsibilities, and divert management attention.

***We depend largely on the continued services of our senior management and other highly-skilled employees, and if we are unable to hire, retain, manage and motivate our employees, we may not be able to grow effectively and our business, results of operations and financial condition could be adversely affected.***

Our future performance depends on the continued services and contributions of our senior management and other key employees to execute on our business plan, and to identify and pursue opportunities and services innovations. The loss of services of senior management or other key employees, whether in the past or in the future, could significantly delay or prevent the achievement of our business, financial condition, development and strategic objectives. In particular, we depend to a considerable degree on the vision, skills, experience, and effort of our co-founder, Chairman and Chief Executive Officer, Vladimir Shmunis. None of our executive officers or other senior management personnel is bound by a written employment agreement and any of them may therefore terminate employment with us at any time with no advance notice. The replacement of any of these senior management personnel, whether past or future, could involve significant time and costs, and such loss could significantly delay or prevent the achievement of our business objectives.

Our future success also depends on our ability to continue to attract and retain highly skilled personnel. Despite many recent layoffs in the technology industry, we believe that there is, and will continue to be, intense competition for highly skilled technical and other personnel with experience in our industry in the San Francisco Bay Area, where our headquarters is located, in Denver, Colorado, where our U.S. sales and customer support office and our network operations center is located, and in other locations where we maintain offices. In addition, changes to U.S. immigration policies, particularly to H-1B and other visa programs, and restrictions on travel could restrain the flow of technical and professional talent into the U.S. and may inhibit our ability to hire qualified personnel. We must provide competitive compensation packages and a high-quality work environment to hire, retain, and motivate employees. If we are unable to retain and motivate our existing employees and attract qualified personnel to fill key positions, we may be unable to manage our business effectively, including the development, marketing, and sale of existing and new subscriptions, which could have a material adverse effect on our business, financial condition, and results of operations. To the extent we hire personnel from competitors, we may be subject to allegations that they have been improperly solicited or divulged proprietary or other confidential information. Volatility in, or lack of performance of, our stock price may also affect our ability to attract and retain key personnel.

***Increased customer turnover, or costs we incur to retain and upsell our customers, could materially and adversely affect our financial performance.***

Although we have entered into long-term contracts with larger customers, those customers who do not have long-term contracts with us may terminate their subscriptions at any time without penalty or early termination charges. We cannot accurately predict the rate of customer terminations or average monthly subscription cancellations or failures to renew, which we refer to as turnover. Our customers with subscription agreements have no obligation to renew their subscriptions for our service after the expiration of their initial subscription period, which is typically between one and three years. In the event that these customers do renew their subscriptions, they may choose to renew for fewer users, shorter contract lengths, or for a less expensive subscription plan or edition. We cannot predict the renewal rates for customers that have entered into subscription contracts with us.

Customer turnover, as well as reductions in the number of users for which a customer subscribes, each could have a significant impact on our results of operations, as does the cost we incur in our efforts to retain our customers and encourage them to upgrade their subscriptions and increase their number of users. Our turnover rate could increase in the future if customers are not satisfied with our subscriptions, the value proposition of our subscriptions or our ability to otherwise meet their needs and expectations. Turnover and reductions in the number of users for whom a customer subscribes may also increase due to factors beyond our control, including the failure or unwillingness of customers to pay their monthly subscription fees due to financial constraints and the impact of a slowing economy. In addition, the impact of the global economic conditions, including concerns about rising inflation or the potential of the U.S. government to default on the federal debt and an associated economic downturn, could cause financial hardship for our customers, decrease technology spending and materially and negatively impact our customers' willingness to enter into or renew subscriptions with us, or cause our customers to seek a decrease in the number of users or solutions for which they subscribe. For example, to address customer hardships, we may work with customers to provide greater flexibility to manage challenges they are facing, but we cannot be

assured that they will not reduce their number of users or terminate their subscriptions altogether. Due to turnover and reductions in the number of users for whom a customer subscribes, we must acquire new customers, or acquire new users within our existing customer base, on an ongoing basis simply to maintain our existing level of customers and revenues. If a significant number of customers terminate, reduce, or fail to renew their subscriptions, we may be required to incur significantly higher marketing and/or sales expenditures than we currently anticipate in order to increase the number of new customers or to upsell existing customers, and such additional marketing and/or sales expenditures could harm our business and results of operations.

Our future success also depends in part on our ability to sell additional subscriptions and additional functionalities to our current customers. This may require increasingly sophisticated and more costly sales efforts and a longer sales cycle. Any increase in the costs necessary to upgrade, expand and retain existing customers could materially and adversely affect our financial performance. If our efforts to convince customers to add users and, in the future, to purchase additional functionalities are not successful, our business may suffer. In addition, such increased costs could cause us to increase our subscription rates, which could increase our turnover rate.

***If we are unable to attract new customers to our subscriptions or upsell to those customers on a cost-effective basis, our business will be materially and adversely affected.***

In order to grow our business, we must continue to attract new customers and expand the number of users in, and services provided to, our existing customer base on a cost-effective basis. We use and periodically adjust the mix of advertising and marketing programs to promote our subscriptions. Significant increases in the pricing of one or more of our advertising channels would increase our advertising costs or may cause us to choose less expensive and perhaps less effective channels to promote our subscriptions. As we add to or change the mix of our advertising and marketing strategies, we may need to expand into channels with significantly higher costs than our current programs, which could materially and adversely affect our results of operations. In addition, a global slowdown of economic activity may disrupt our sales channels and our ability to attract new customers, which may require us to adjust our advertising and marketing programs or make further investments in these programs. We will incur advertising and marketing expenses in advance of when we anticipate recognizing any revenues generated by such expenses, and we may fail to otherwise experience an increase in revenues or brand awareness as a result of such expenditures. We have made in the past, and may make in the future, significant expenditures and investments in new advertising campaigns, and we cannot assure you that any such investments will lead to the cost-effective acquisition of additional customers. If we are unable to maintain effective advertising programs, our ability to attract new customers could be materially and adversely affected, our advertising and marketing expenses could increase substantially, and our results of operations may suffer.

Some of our potential customers learn about us through leading search engines, such as Google, Yahoo!, and Microsoft Bing. While we employ search engine optimization and search engine marketing strategies, our ability to maintain and increase the number of visitors directed to our website is not entirely within our control. If search engine companies modify their search algorithms in a manner that reduces the prominence of our listing, or if our competitors' search engine optimization efforts are more successful than ours, or if search engine companies restrict or prohibit us from using their services, fewer potential customers may click through to our website. In addition, the cost of purchased listings has increased in the past and may increase in the future. A decrease in website traffic or an increase in search costs could materially and adversely affect our customer acquisition efforts and our results of operations.

***A significant portion of our revenues today come from small and medium-sized businesses, which may have fewer financial resources to weather an economic downturn.***

A significant portion of our revenues today come from small and medium-sized businesses. These customers may be materially and adversely affected by economic downturns to a greater extent than larger, more established businesses. These businesses typically have more limited financial resources, including capital-borrowing capacity, than larger entities. Any economic downturn could decrease technology spending and the number of employees of small and medium sized businesses in ways that adversely affect demand for our offerings, could increase churn or downsell and harm our business and results of operations. As the majority of our customers pay for our subscriptions through credit and debit cards, weakness in certain segments of the credit markets and in the U.S. and global economies has resulted in and may in the future result in increased numbers of rejected credit and debit card payments, which could materially affect our business by increasing customer cancellations and impacting our ability to engage new small and medium-sized customers. If small and medium-sized businesses experience financial hardship as a result of a weak economy, industry consolidation or for any other reason, the overall demand for our subscriptions could be materially and adversely affected.

***We face significant risks in our strategy to target medium-sized and larger businesses for sales of our subscriptions and, if we do not manage these efforts effectively, our business and results of operations could be materially and adversely affected.***

Sales to medium-sized and larger businesses continue to grow in both absolute dollars and as a percentage of our total sales. As we continue to target more of our sales efforts to medium-sized and larger businesses, we expect to incur higher costs and longer sales cycles and we may be less effective at predicting when we will complete these sales. In these market segments, the decision to purchase our subscriptions generally requires the approval of more technical personnel and management levels within a potential customer's organization, and therefore, these types of sales require us to invest more time educating these potential customers about the benefits of our subscriptions. In addition, larger customers may demand more features, integration services, and customization, and may require highly skilled sales and support personnel. Our investment in marketing our subscriptions to these potential customers may not be successful, which could significantly and adversely affect our results of operations and our overall ability to grow our customer base. Furthermore, many medium-sized and larger businesses that we target for sales may already purchase business communications solutions from our larger competitors or, due to economic conditions or otherwise, reduce their technology spending or reduce the number of employees for whom they purchase our solutions or reduce the number of existing employees using our solution (i.e., down-sell). As a result of these factors, these sales opportunities may require us to devote greater research and development resources and sales support to individual customers, and invest in hiring and retaining highly skilled personnel, resulting in increased costs and could likely lengthen our typical sales cycle, which could strain our sales and support resources. Moreover, these larger transactions may require us to delay recognizing the associated revenues we derive from these customers until any technical or implementation requirements have been met.

***Support for smartphones and tablets are an integral part of our solutions. If we are unable to develop robust mobile applications that operate on mobile platforms that our customers use, our business and results of operations could be materially and adversely affected.***

Our solutions allow our customers to use and manage our cloud-based business communications solution on smart devices. As new smart devices and operating systems are released, we may encounter difficulties supporting these devices and services, and we may need to devote significant resources to the creation, support, and maintenance of our mobile applications. In addition, if we experience difficulties in the future integrating our mobile applications into smart devices or if problems arise with our relationships with providers of mobile operating systems, such as those of Apple Inc. or Alphabet Inc., our future growth and our results of operations could suffer.

***If we are unable to develop, license, or acquire new services or applications on a timely and cost-effective basis, our business, financial condition, and results of operations may be materially and adversely affected.***

The cloud-based business communications industry is characterized by rapid development of and changes in customer requirements, frequent introductions of new and enhanced services, and continuing and rapid technological advancement. We cannot predict the effect of technological changes or the introduction of new, disruptive technologies on our business, and the market for cloud-based business communications may develop more slowly than we anticipate, or develop in a manner different than we expect, and our solutions could fail to achieve market acceptance. Our continued growth depends on continued use of voice and video communications by businesses, as compared to email and other data-based methods, and future demand for and adoption of Internet voice and video communications systems and services. In addition, to compete successfully in this emerging market, we must anticipate and adapt to technological changes and evolving industry standards, and continue to design, develop, manufacture, and sell new and enhanced services that provide increasingly higher levels of performance and reliability at lower cost. Currently, we derive a majority of our revenues from subscriptions to RingCentral MVP, and we expect this will continue for the foreseeable future. However, our future success likely will also depend on our ability to introduce and sell new services, features, and functionality that enhance or are beyond the subscriptions we currently offer, as well as to improve usability and support and increase customer satisfaction. Our failure to develop solutions that satisfy customer preferences in a timely and cost-effective manner may harm our ability to renew our subscriptions with existing customers and create or increase demand for our subscriptions and may materially and adversely impact our results of operations.

The introduction of new services by competitors or the development of entirely new technologies to replace existing offerings could make our solutions obsolete or adversely affect our business and results of operations. Announcements of future releases and new services and technologies by our competitors or us could cause customers to defer purchases of our existing subscriptions, which also could have a material adverse effect on our business, financial condition or results of operations. We may experience difficulties with software development, operations, design, or marketing that could delay or prevent our development, introduction, or implementation of new or enhanced services and applications. We have in the past experienced delays in the planned release dates of new features and upgrades and have discovered defects in new services and applications

after their introduction. We cannot assure you that new features or upgrades will be released according to schedule, or that, when released, they will not contain defects. Either of these situations could result in adverse publicity, loss of revenues, delay in market acceptance, or claims by customers brought against us, all of which could harm our reputation, business, results of operations, and financial condition. Moreover, the development of new or enhanced services or applications may require substantial investment, and we must continue to invest a significant amount of resources in our research and development efforts to develop these services and applications to remain competitive. We do not know whether these investments will be successful. If customers do not widely adopt any new or enhanced services and applications, we may not be able to realize a return on our investment. If we are unable to develop, license, or acquire new or enhanced services and applications on a timely and cost-effective basis, or if such new or enhanced services and applications do not achieve market acceptance, our business, financial condition, and results of operations may be materially and adversely affected.

***If we fail to continue to develop our brand or our reputation is harmed, our business may suffer.***

We believe that continuing to strengthen our current brand will be critical to achieving widespread acceptance of our subscriptions and will require continued focus on active marketing efforts. The demand for and cost of online and traditional advertising have been increasing and may continue to increase. Accordingly, we may need to increase our investment in, and devote greater resources to, advertising, marketing, and other efforts to create and maintain brand loyalty among users. Brand promotion activities may not yield increased revenues, and even if they do, any increased revenues may not offset the expenses incurred in building our brand. In addition, if we do not handle customer complaints effectively, our brand and reputation may suffer, we may lose our customers' confidence, and they may choose to terminate, reduce or not to renew their subscriptions. Many of our customers also participate in social media and online blogs about Internet-based software solutions, including our subscriptions, and our success depends in part on our ability to minimize negative and generate positive customer feedback through such online channels where existing and potential customers seek and share information. If we fail to sufficiently invest in, promote and maintain our brand, our business could be materially and adversely affected.

***If we experience excessive fraudulent activity or cannot meet evolving credit card association merchant standards, we could incur substantial costs and lose the right to accept credit cards for payment, which could cause our customer base to decline significantly.***

Most of our customers authorize us to bill their credit card accounts directly for service fees that we charge. If customers pay for our subscriptions with stolen credit cards, we could incur substantial third-party vendor costs for which we may not be reimbursed. Further, our customers provide us with credit card billing information online or over the phone, and we do not review the physical credit cards used in these transactions, which increases our risk of exposure to fraudulent activity. We also incur charges, which are referred to in the industry as chargebacks, from the credit card companies from claims that a customer did not authorize the specific credit card transaction to purchase our subscription. If the number of chargebacks becomes excessive, we could be assessed substantial fines or be charged higher transaction fees, and we could lose the right to accept credit cards for payment. In addition, credit card issuers may change merchant and/or service provider standards, including data protection standards, required to utilize their services from time to time. We have established and implemented measures intended to comply with the Payment Card Industry Data Security Standard ("PCI DSS") in the U.S., Canada, and the U.K. If we fail to maintain compliance with such standards or fail to meet new standards, the credit card associations could fine us or terminate their agreements with us, and we would be unable to accept credit cards as payment for our subscriptions. If we fail to maintain compliance with current service provider standards, such as PCI DSS, or fail to meet new standards, customers may choose not to use our services for certain types of communication they have with their customers. If such a failure to comply with relevant standards occurs, we may also face legal liability if we are found to not comply with applicable laws that incorporate, by reference or by adoption of substantially similar provisions, merchant or service provider standards, including PCI DSS. Our subscriptions may also be subject to fraudulent usage, including but not limited to revenue share fraud, domestic traffic pumping, subscription fraud, premium text message scams, and other fraudulent schemes. This usage can result in, among other things, substantial bills from our vendors, for which we would be responsible, for terminating fraudulent call traffic. In addition, third parties may have attempted in the past, and may attempt in the future, to induce employees, sub-contractors, or consultants into disclosing customer credentials and other account information, which can result in unauthorized access to customer accounts and customer data, unauthorized use of customers' services, charges to customers for fraudulent usage and costs that we must pay to global service providers. Although we implement multiple fraud prevention and detection controls, we cannot assure you that these controls will be adequate to protect against fraud. Substantial losses due to fraud or our inability to accept credit card payments could cause our paid customer base to significantly decrease, which would have a material adverse effect on our results of operations, financial condition, and ability to grow our business.

*We are in the process of expanding our international operations, which exposes us to significant risks.*

We have significant operations directly or through third parties in the U.S., Canada, the U.K., China, Ukraine, the Philippines, Germany, Georgia, Bulgaria, Spain, and France. We also sell our solutions to customers in several countries in Europe, Australia and Singapore, and we expect to grow our international presence in the future. The future success of our business will depend, in part, on our ability to expand our operations and customer base worldwide. Operating in international markets requires significant resources and management attention and will subject us to regulatory, economic, and political risks that are different from those in the U.S. Due to our limited experience with international operations and developing and managing sales and distribution channels in international markets, our international expansion efforts may not be successful. In addition, we will face risks in doing business internationally that could materially and adversely affect our business, including:

- our ability to comply with differing and evolving technical and environmental standards, telecommunications regulations, and certification requirements outside the U.S.;
- difficulties and costs associated with staffing and managing foreign operations;
- our ability to effectively price our subscriptions in competitive international markets;
- potentially greater difficulty collecting accounts receivable and longer payment cycles;
- the need to adapt and localize our subscriptions for specific countries;
- the need to offer customer care in various native languages;
- reliance on third parties over which we have limited control, including those that market and resell our subscriptions;
- availability of reliable broadband connectivity and wide area networks in targeted areas for expansion;
- lower levels of adoption of credit or debit card usage for Internet related purchases by foreign customers and compliance with various foreign regulations related to credit or debit card processing and data protection requirements;
- difficulties in understanding and complying with local laws, regulations, and customs in foreign jurisdictions;
- restrictions on travel to or from countries in which we operate or inability to access certain areas;
- export controls and economic sanctions;
- changes in diplomatic and trade relationships, including tariffs and other non-tariff barriers, such as quotas and local content rules;
- U.S. government trade restrictions, including those which may impose restrictions, including prohibitions, on the exportation, re-exportation, sale, shipment or other transfer of programming, technology, components, and/or services to foreign persons;
- our ability to comply with different and evolving laws, rules, and regulations, including the European General Data Protection Regulation (the “GDPR”) and other data privacy and data protection laws, rules and regulations;
- compliance with various anti-bribery and anti-corruption laws such as the Foreign Corrupt Practices Act and U.K. Bribery Act of 2010;
- more limited protection for intellectual property rights in some countries;
- adverse tax consequences;
- fluctuations in currency exchange rates;
- exchange control regulations, which might restrict or prohibit our conversion of other currencies into U.S. dollars;
- restrictions on the transfer of funds;
- new and different sources of competition;
- natural disasters or global health crises, including the ongoing COVID-19 pandemic;
- political and economic instability created by the Russian invasion of Ukraine;
- deterioration of political relations between the U.S. and other countries in which we operate, particularly China and the Philippines; and
- political or social unrest, economic instability, conflict or war in such countries, or sanctions implemented by the U.S. against these countries, such as the ongoing geopolitical tensions related to Russia’s actions in Ukraine, and resulting sanctions imposed by the U.S. and other countries, and retaliatory actions taken by Russia in response to such sanctions, all of which could have a material adverse effect on our operations.

Our failure to manage any of these risks successfully could harm our future international operations and our overall business.

***We may expand through acquisitions of, investments in, or strategic partnerships or other strategic transactions with other companies, each of which may divert our management's attention, result in additional dilution to our stockholders, increase expenses, disrupt our operations, and harm our results of operations.***

Our business strategy may, from time to time, include acquiring or investing in complementary services, technologies or businesses, strategic investments and partnerships, or other strategic transactions, such as our investment in and strategic partnerships with Avaya, Atos, Amazon, Mitel, Vodafone, DT, Charter and Verizon. We cannot assure you that we will successfully identify suitable acquisition candidates or transaction counterparties, securely or effectively integrate or manage disparate technologies, lines of business, personnel and corporate cultures, realize our business strategy or the expected return on our investment, or manage a geographically dispersed company. Any such acquisition, investment, strategic partnership, or other strategic transaction could materially and adversely affect our results of operations. The process of negotiating, effecting, and realizing the benefits from acquisitions, investments, strategic partnerships, and strategic transactions is complex, expensive and time-consuming, and may cause an interruption of, or loss of momentum in, development and sales activities and operations of both companies, and we may incur substantial cost and expense, as well as divert the attention of management. We may issue equity securities which could dilute current stockholders' ownership, incur debt, assume contingent or other liabilities and expend cash in acquisitions, investments, strategic partnerships, and other strategic transactions which could negatively impact our financial position, stockholder equity, and stock price.

Acquisitions, investments, strategic partnerships, and other strategic transactions involve significant risks and uncertainties, including:

- the potential failure to achieve the expected benefits of the acquisition, investment, strategic partnership, or other strategic transaction;
- unanticipated costs and liabilities;
- difficulties in integrating new solutions and subscriptions, software, businesses, operations, and technology infrastructure in an efficient and effective manner;
- difficulties in maintaining customer relations;
- the potential loss of key employees of any acquired businesses;
- the diversion of the attention of our senior management from the operation of our daily business;
- the potential adverse effect on our cash position to the extent that we use cash for the transaction consideration;
- the potential significant increase of our interest expense, leverage, and debt service requirements if we incur additional debt to pay for an acquisition, investment, strategic partnership, or other strategic transaction;
- the potential issuance of securities that would dilute our stockholders' percentage ownership;
- the potential to incur large and immediate write-offs and restructuring and other related expenses;
- the potential liability or expenses associated with new types of data stored, existing security obligations or liabilities, unknown weaknesses in our solutions, insufficient security measures in place, and compromise of our networks via access to our systems from assets not previously under our control; and
- the inability to maintain uniform standards, controls, policies, and procedures.

Any acquisition, investment, strategic partnership, or other strategic transaction could expose us to unknown liabilities. Moreover, we cannot assure you that we will realize the anticipated benefits of any acquisition, investment, strategic partnership, or other strategic transaction. In addition, our inability to successfully operate and integrate newly acquired businesses or newly formed strategic partnerships appropriately, effectively, and in a timely manner could impair our ability to take advantage of future growth opportunities and other advances in technology, as well as on our revenues, gross margins, and expenses.

These are significant investments on which we may not realize the anticipated benefits for various reasons. For example, in connection with our strategic partnership with Avaya, we made an advance of \$375.0 million that was paid primarily in our Class A Common Stock, predominantly for future fees, as well as for certain licensing rights, and we purchased \$125.0 million of Avaya Series A Preferred Stock. On December 13, 2022, Avaya filed a Form 8-K disclosing ongoing discussions regarding one or more potential financings, refinancings, recapitalizations, reorganizations, restructurings or investment transactions. In light of public disclosures about the likelihood of Avaya's financial restructuring via Chapter 11, we recorded a non-cash asset write-down charge of \$279.3 million for the year ended December 31, 2022, out of which \$21.7 million of this balance was accrued interest and was recorded in other income (expense) in the Consolidated Statement of



Operations. Further, on February 14, 2023, Avaya initiated an expedited, prepackaged financial restructuring via Chapter 11 with the support of certain of its financial stakeholders, including us. In connection therewith, we and Avaya entered into a new extended and expanded partnership arrangement pursuant to which, among other things, ACO remains Avaya's exclusive UCaaS offering and Avaya agreed to certain minimum volume commitments. As part of the new agreements, we and Avaya agreed to a revised go-to-market incentive structure intended to drive migration of customers to ACO. Avaya's contemplated prepackaged financial restructuring plan contemplates that the new partnership agreements between us and Avaya will be assumed and survive Avaya's emergence from Chapter 11 and that the shares of Avaya Series A Preferred Stock held by us will be cancelled without any consideration. Refer to Note 5, Strategic Partnerships and Asset Acquisitions in this Annual Report on Form 10-K for further information regarding our assessment of the recoverability of our deferred and prepaid sales commission balances with Avaya.

In addition, our ability to offer, sell or transfer certain investments may be limited by applicable securities laws and regulations, and our ability to liquidate and realize value from such investments may be negatively and materially impacted by any delays or limitations on our ability to offer, sell, or transfer certain investments. In addition, certain investments are speculative in nature and may be volatile or decline in value or be entirely lost, which could have a negative impact on our future financial position, results of operations, and cash flows.

***We may be subject to liabilities on past sales for taxes, surcharges, and fees and our operating results may be harmed if we are required to collect such amounts in jurisdictions where we have not historically done so.***

We believe we collect state and local sales tax and use, excise, utility user, and ad valorem taxes, fees, or surcharges in all relevant jurisdictions in which we generate sales, based on our understanding of the applicable laws in those jurisdictions. Such tax, fees and surcharge laws and rates vary greatly by jurisdiction, and the application of such taxes to e-commerce businesses, such as ours, is a complex and evolving area. There is uncertainty as to what constitutes sufficient "in state presence" for a state to levy taxes, fees, and surcharges for sales made over the Internet, and after the U.S. Supreme Court's ruling in *South Dakota v. Wayfair*, U.S. states may require an online retailer with no in-state property or personnel to collect and remit sales tax on sales to the state's residents, which may permit wider enforcement of sales tax collection requirements. Therefore, the application of existing or future laws relating to indirect taxes to our business, or the audit of our business and operations with respect to such taxes or challenges of our positions by taxing authorities, all could result in increased tax liabilities for us or our customers that could materially and adversely affect our results of operations and our relationships with our customers.

***We may be unable to use some or all of our net operating loss carryforwards, which could materially and adversely affect our reported financial condition and results of operations.***

As of December 31, 2022, we have federal net operating loss carryforwards ("NOLs") of \$1.9 billion, of which \$193.4 million expire between 2033 and 2037 and the remainder do not expire. Additionally, we have state net operating loss carryforwards of \$1.3 billion which will begin expiring in 2023. We also have federal research tax credit carryforwards that will begin to expire in 2028. Realization of these net operating loss and research tax credit carryforwards depends on future income, and there is a risk that our existing carryforwards could expire unused and be unavailable to offset future income tax liabilities, which could materially and adversely affect our results of operations.

In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, our ability to utilize NOLs or other tax attributes, such as research tax credits, in any taxable year may be limited if we experience an "ownership change." An "ownership change" generally occurs if one or more stockholders or groups of stockholders, who each own at least 5% of our stock, increase their collective ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws.

No material deferred tax assets have been recognized on our Consolidated Balance Sheets related to these NOLs, as they are fully offset by a valuation allowance. If we have previously had, or have in the future, one or more Section 382 "ownership changes," including in connection with our initial public offering or another offering, or if we do not generate sufficient taxable income, we may not be able to utilize a material portion of our NOLs, even if we achieve profitability. If we are limited in our ability to use our NOLs in future years in which we have taxable income, we will pay more taxes than if we were able to fully utilize our NOLs. This could materially and adversely affect our results of operations.

***If we are unable to effectively process local number and toll-free number portability provisioning in a timely manner, our growth may be negatively affected.***

We support local number and toll-free number portability, which allows our customers to transfer to us and thereby retain their existing phone numbers when subscribing to our services. Transferring numbers is a manual process that can take up to 15 business days or longer to complete. A new customer of our subscriptions must maintain both our subscription and the customer's existing phone service during the number transferring process. Any delay that we experience in transferring these numbers typically results from the fact that we depend on third-party global service providers to transfer these numbers, a process that we do not control, and these third-party global service providers may refuse or substantially delay the transfer of these numbers to us. Local number portability is considered an important feature by many potential customers, and if we fail to reduce any related delays, we may experience increased difficulty in acquiring new customers. Moreover, the FCC requires Internet voice communications providers to comply with specified number porting timeframes when customers leave our subscription for the services of another provider. Several international jurisdictions have imposed similar number portability requirements on subscription providers like us. If we or our third-party global service providers are unable to process number portability requests within the requisite timeframes, we could be subject to fines and penalties. Additionally, in the U.S., both customers and global service providers may seek relief from the relevant state public utility commission, the FCC, or in state or federal court for violation of local number portability requirements.

***Our business could suffer if we cannot obtain or retain direct inward dialing numbers or are prohibited from obtaining local or toll-free numbers or if we are limited to distributing local or toll-free numbers to only certain customers.***

Our future success depends on our ability to procure large quantities of local and toll-free direct inward dialing numbers ("DIDs") in the U.S. and foreign countries in desirable locations at a reasonable cost and without restrictions. Our ability to procure and distribute DIDs depends on factors outside of our control, such as applicable regulations, the practices of the communications global service providers that provide DIDs, the cost of these DIDs, and the level of demand for new DIDs. Due to their limited availability, there are certain popular area code prefixes that we generally cannot obtain. Our inability to acquire DIDs for our operations would make our subscriptions less attractive to potential customers in the affected local geographic areas. In addition, future growth in our customer base, together with growth in the customer bases of other providers of cloud-based business communications, has increased, which increases our dependence on needing sufficiently large quantities of DIDs.

***We may not be able to manage our inventory levels effectively, which may lead to inventory obsolescence that would force us to incur inventory write-downs.***

Our vendor-supplied phones have lead times of up to several months for delivery to our fulfillment agents and are built to forecasts that are necessarily imprecise. It is likely that, from time to time, we will have either excess or insufficient product inventory. In addition, because we rely on third-party vendors for the supply of our vendor-supplied phones, our inventory levels are subject to the conditions regarding the timing of purchase orders and delivery dates that are not within our control. Excess inventory levels would subject us to the risk of inventory obsolescence, while insufficient levels of inventory may negatively affect relations with customers. For instance, our customers rely upon our ability to meet committed delivery dates, and any disruption in the supply of our subscriptions could result in loss of customers or harm to our ability to attract new customers. Any reduction or interruption in the ability of our vendors to supply our customers with vendor-supplied phones, including as a result of the ongoing COVID-19 pandemic, could cause us to lose revenue, damage our customer relationships and harm our reputation in the marketplace. Any of these factors could have a material adverse effect on our business, financial condition or results of operations.

***We currently depend on three phone device suppliers and two fulfillment agents to configure and deliver the phones that we sell and any delay or interruption in manufacturing, configuring and delivering by these third parties would result in delayed or reduced shipments to our customers and may harm our business.***

We rely on three suppliers to provide phones that we offer for sale to our customers that use our subscriptions, and we rely on two fulfillment agents to configure and deliver the phones that we sell to our customers. Accordingly, we could be adversely affected if such third parties fail to maintain competitive phones or configuration services or fail to continue to make them available on attractive terms, or at all. These suppliers have been and will continue to be adversely impacted by the COVID-19 pandemic, which could affect their ability to perform satisfactorily or at all.

If our fulfillment agents are unable to deliver phones of acceptable quality, or if there is a reduction or interruption in their ability to supply the phones in a timely manner, our ability to bring services to market, the reliability of our subscriptions and our relationships with customers or our overall reputation in the marketplace could suffer, which could cause us to lose revenue. We expect that it could take several months to effectively transition to new third-party manufacturers or fulfillment agents.

***If our vendor-supplied phones are not able to interoperate effectively with our own back-end servers and systems, our customers may not be able to use our subscriptions, which could harm our business, financial condition and results of operations.***

Phones must interoperate with our back-end servers and systems, which contain complex specifications and utilize multiple protocol standards and software applications. Currently, the phones used by our customers are manufactured by only three third-party providers. If any of these providers changes the operation of their phones, we will be required to undertake development and testing efforts to ensure that the new phones interoperate with our system. In addition, we must be successful in integrating our solutions with strategic partners' devices in order to market and sell these solutions. These efforts may require significant capital and employee resources, and we may not accomplish these development efforts quickly or cost-effectively, if at all. If our vendor-supplied phones do not interoperate effectively with our system, our customers' ability to use our subscriptions could be delayed or orders for our subscriptions could be canceled, which would harm our business, financial condition, and results of operations.

***Our Credit Agreement imposes operating and financial restrictions on us.***

On February 14, 2023, we entered into a Credit Agreement (the "Credit Agreement"), among the Company, the lenders from time to time party thereto and Bank of America, N.A., as administrative agent and as collateral agent. The obligations under the Credit Agreement and the other loan documents are guaranteed by certain of our material domestic subsidiaries, and secured by substantially all of our personal property and that of such subsidiary guarantors. Our Credit Agreement contains covenants that limit our ability and the ability of our subsidiaries to:

- incur additional debt;
- create liens;
- make investments;
- dispose of assets; and
- make certain restricted payments.

Further, the Credit Agreement contains financial covenants that require compliance with a maximum total net leverage ratio and minimum interest coverage ratio. All of these covenants may adversely affect our ability to finance our operations, meet or otherwise address our capital needs, pursue business opportunities, react to market conditions, or otherwise restrict our activities or business plans. A breach of any of these covenants could result in an event of default under the Credit Agreement. If an event of default occurs, the lenders may terminate their commitments and accelerate our obligations under the Credit Agreement. Any such acceleration could result in an event of default under our convertible notes. Refer to Note 16 – *Subsequent Events* of the notes to the consolidated financial statements included in Part II, Item 8, "Consolidated Financial Statements and Supplementary Data" in this Annual Report on Form 10-K for additional information.

### **Risks Related to Regulatory Matters**

***Our subscriptions are subject to regulation, and future legislative or regulatory actions could adversely affect our business and expose us to liability in the U.S. and internationally.***

#### *Federal Regulation*

Our business is regulated by the FCC. As a communications services provider, we are subject to existing or potential FCC regulations relating to privacy, disability access, porting of numbers and enabling abbreviated dialing to designated numbers, maintaining records for disconnected numbers, cooperation with law enforcement, Federal Universal Service Fund

(“USF”) contributions, Enhanced 911 (“E-911”), outage reporting, call authentication, call spoofing, call blocking and other requirements and regulations. The FCC is considering new rules for text communications. FCC classification of our Internet voice communications services as telecommunications services could result in additional federal and state regulatory obligations. If we do not comply with FCC rules and regulations, we could be subject to FCC enforcement actions, fines, loss of licenses or authorizations, repayment of funds, and possibly restrictions on our ability to operate or offer certain of our subscriptions. Any enforcement action by the FCC, which may be a public process, would hurt our reputation in the industry, possibly impair our ability to sell our subscriptions to customers and could have a materially adverse impact on our revenues.

Through RCLEC, we also provide competitive local exchange carrier (“CLEC”) and IP-enabled (“IPES”) services which are regulated by the FCC as traditional telecommunications services. Our CLEC services depend on certain provisions of the Telecommunications Act of 1996 that require incumbent local exchange carriers (“ILECs”) to provide us facilities and services that are necessary to provide our services. Over the past several years, the FCC has reduced or eliminated a number of regulations governing ILECs’ wholesale offerings. If ILECs were no longer required by law to provide such services to us, or ceased to provide these services at reasonable rates, terms and conditions, our business could be adversely affected and our cost of providing CLEC services could increase. This could have a materially adverse impact on our results of operations and cash flows.

In addition, the federal Telephone Consumer Protection Act (“TCPA”) and FCC rules implementing the TCPA, prohibit sending unsolicited facsimile advertisements or making illegal robocalls, subject to certain exceptions. The FCC may take enforcement action against persons or entities that send “junk faxes,” or make illegal robocalls and individuals also may have a private cause of action. Although the FCC’s rules prohibiting unsolicited fax advertisements or making illegal robocalls apply to those who “send” the advertisements or make the calls, fax transmitters or other service providers that have a high degree of involvement in, or actual notice of, unlawful sending of junk faxes or making of illegal robocalls and have failed to take steps to prevent such transmissions may also face liability under the FCC’s rules, or in the case of illegal robocalls, Federal Trade Commission rules. We take significant steps designed to prevent our systems from being used to make illegal robocalls or send unsolicited faxes on a large scale, and we do not believe that we have a high degree of involvement in, or notice of, the use of our systems to broadcast junk faxes or make illegal robocalls. However, because fax transmitters and related service providers do not enjoy an absolute exemption from liability under the TCPA and related FCC rules, we could face FCC or FTC inquiry and enforcement or civil litigation, or private causes of action, if someone uses our system for such purposes. If any of these were to occur, we could be required to incur significant costs and management’s attention could be diverted. Further, if we were to be held liable for the use of our service to send unsolicited faxes or make illegal robocalls or to settle any action or proceeding, any judgment, settlement, or penalties could cause a material adverse effect on our operations.

#### *State Regulation*

States currently do not regulate our Internet voice communications subscriptions, which are considered to be nomadic because they can be used from any broadband connection. However, a number of states require us to register as a Voice over Internet Protocol (“VoIP”) provider, contribute to state USF, contribute to E-911, and pay other surcharges and annual fees that fund various utility commission programs, while others are actively considering extending their public policy programs to include the subscriptions we provide. We pass USF, E-911 fees, and other surcharges through to our customers, which may result in our subscriptions becoming more expensive or require that we absorb these costs. State public utility commissions may attempt to apply state telecommunications regulations to Internet voice communications subscriptions like ours.

RCLEC services are subject to regulation by the public utility regulatory agency in those states where we provide local telecommunications services. This regulation includes the requirement to obtain a certificate of public convenience and necessity or other similar licenses prior to offering our CLEC services, as well as registrations related to IPES services. We may also be required to file tariffs that describe our CLEC services and provide rates for those services. We are also required to comply with regulations that vary by state concerning service quality, disconnection and billing requirements. State commissions also have authority to review and approve interconnection agreements between incumbent phone carriers and CLECs such as our subsidiary.

Both we and RCLEC are also subject to state consumer protection laws, including privacy requirements, as well as U.S. state or municipal sales, use, excise, gross receipts, utility user and ad valorem taxes, fees, or surcharges.

#### *International Regulation*

As we expand internationally, we may be subject to telecommunications, consumer protection, data protection, emergency call services, and other laws, regulations, taxes, and fees in the foreign countries where we offer our subscriptions. Any foreign regulations could impose substantial compliance costs on us, restrict our ability to compete, and impact our ability

to expand our service offerings in certain markets. Moreover, the regulatory environment is constantly evolving and changes to the applicable regulations could impose additional compliance costs and require modifications to our technology and operations. European Union member states are currently implementing the new European Electronic Communications Code, including major modifications to the German Telecommunications Act and French regulations. The new rules in France impose additional obligations beyond our existing business model and will require domestic infrastructure buildout in France. Internationally, we currently sell our subscriptions in Canada, the U.K., Australia, Singapore, and several European countries. We also offer our Global MVP solution, enabling our multinational customers in locations where we sell our solutions, to establish local phone solutions in various countries internationally. We may be subject to telecommunications, consumer protection, data protection, emergency call services, call authentication, and other laws and regulations in additional countries as we continue to expand our Global MVP solution internationally.

In addition, our international operations are potentially subject to country-specific governmental regulation and related actions that may increase our costs or impact our solution and service offerings or prevent us from offering or providing our solutions and subscriptions in certain countries. Certain of our subscriptions may be used by customers located in countries where VoIP and other forms of IP communications may be illegal or require special licensing or in countries on a U.S. embargo list. Even where our solutions are reportedly illegal or become illegal or where users are located in an embargoed country, users in those countries may be able to continue to use our solutions and subscriptions in those countries notwithstanding the illegality or embargo. We may be subject to penalties or governmental action if customers continue to use our solutions and subscriptions in countries where it is illegal to do so, and any such penalties or governmental action may be costly and may harm our business and damage our brand and reputation. We may be required to incur additional expenses to meet applicable international regulatory requirements or be required to discontinue those subscriptions if required by law or if we cannot or will not meet those requirements.

The increasing growth and popularity of Internet voice communications, video conferencing and messaging heighten the risk that governments will regulate or impose new or increased fees or taxes on these services. To the extent that the use of our subscriptions continues to grow, and our user base continues to expand, regulators may be more likely to seek to regulate or impose new or additional taxes, surcharges or fees on our subscriptions.

***We process, store, and use personal information and other data, which subjects us and our customers to a variety of evolving international statutes, governmental regulation, industry standards and self-regulatory schemes, contractual obligations, and other legal obligations related to privacy and data protection, which may increase our costs, decrease adoption and use of our solutions and subscriptions, and expose us to liability.***

In the course of providing our services, we collect, store, and process many types of data, including personal data. Moreover, our customers can use our subscriptions to store contact and other personal or identifying information, and to process, transmit, receive, store, and retrieve a variety of communications and messages, including information about their own customers and other contacts. Customers are able, and may be authorized under certain circumstances, to use our subscriptions to transmit, receive, and/or store personal information.

There are a number of federal, state, local, and foreign laws and regulations, as well as contractual obligations and industry standards, that provide for certain obligations and restrictions with respect to data privacy and security, and the collection, storage, retention, protection, use, processing, transmission, sharing, disclosure, and protection of personal information and other customer data. With the implementation of our Global MVP solution, we are subject to additional data privacy regulations in other countries throughout the world. The scope of these obligations and restrictions is changing, subject to differing interpretations, and may be inconsistent among countries or conflict with other rules, and their status remains uncertain. Failure to comply with obligations and restrictions related to data privacy, data protection, and security in any jurisdiction in which we operate could subject us to lawsuits, fines, criminal penalties, statutory damages, consent decrees, injunctions, adverse publicity, and other losses that could harm our business.

For example, the GDPR, which came into force in May 2018, strengthened the existing data protection regulations in the EU and its provisions include increasing the maximum level of fines that EU regulators may impose for the most serious of breaches to the greater of €20 million or 4% of worldwide annual turnover. National data protection supervisory authorities have been actively monitoring and sanctioning noncompliance with applicable regulations with particular focus on use of cookies without consent, protection of children data and breach of security. Such fines would be in addition to (i) the rights of individuals to sue for damages in respect of any data privacy breach which causes them to suffer harm and (ii) the right of individual member states to impose additional sanctions over and above the administrative fines specified in the GDPR. Other examples include, but are not limited to, Canadian data protection and anti-spam legislation and Australia's Privacy Act and Australia's Spam Act 2003, as amended.

Among other requirements, the GDPR regulates data transferred from the European Economic Area (the “EEA”) to countries that have not been found to provide adequate protection to such personal data, including the U.S. On June 4, 2021, the EU Commission adopted new Standard Contractual Clauses (“2021 SCCs”), for the transfer of personal data from the EU to countries not deemed by the EU Commission as providing adequate protection of personal data (e.g., the U.S.). We have begun adopting the 2021 SCCs with our customers and our suppliers transferring data out of the EEA and Switzerland (with approved modifications by the Federal Data Protection and Information Commissioner). Despite this, it may be difficult to maintain appropriate safeguards for the transfer of such data from the EEA and Switzerland, in particular as a result of continued legal and legislative activity that has challenged or called into question existing means of data transfers to countries that have not been found to provide adequate protection for personal data.

Following the U.K.’s exit from the EU on January 31, 2020 the U.K. largely adopted the EU rules on cross-border data flows, but allowed flexibility to diverge. On June 28, 2021, the European Commission issued an adequacy decision under the GDPR and the Law Enforcement Directive, pursuant to which personal data generally may be transferred from the EU to the U.K. without restriction; however, this adequacy decision is subject to a four-year “sunset” period, after which the European Commission’s adequacy decision may be renewed. On March 21, 2022, the U.K. Parliament approved new Standard Contractual Clauses (“UK SCCs”) to support personal data transfers out of the U.K., and we may, in addition to other impacts, experience additional costs associated with increased compliance burdens and be required to engage in new contract negotiations with third parties that aid in processing personal data on our behalf or localize certain personal data. We have begun adopting the UK SCCs with our customers and suppliers transferring personal data out of the U.K.

The 2021 SCCs and the UK SCCs include requirements to conduct personal data transfer impact assessments before transferring personal data out of the EEA, Switzerland and the U.K. The assessment requires the parties to take into account the specific circumstances of the transfer, the laws and practices of the destination country, particularly relating to government access, and any additional relevant contractual, technical or organizational safeguards. Each party is required to perform such an assessment and determine whether the transfer can proceed or must be suspended if there are insufficient safeguards to protect the transfer of personal data. We may, in addition to other impacts, experience additional costs associated with increased compliance burdens following the implementation of the 2021 SCCs and UK SCCs, including requirements to block, or require ad hoc verification of measures taken with respect to, certain data flows from the EEA, Switzerland and the U.K. to the U.S and other non-EEA countries. Additionally, we and our customers face the potential for regulators in the EEA, Switzerland or the U.K. to apply different standards to the transfer of personal data from the EEA, Switzerland or the U.K. to the U.S. and other non-EEA countries.

Anticipated developments and future regulatory guidance may, moreover, result in further varying requirements as well as varying interpretations regarding the industry-standard measures that we, and other companies, have taken, and as such, may require ongoing investments in our compliance program. Uncertainty regarding some details for cross-border data transfers remains. If we are unable to take necessary and additional measures as may be required, then we may be at risk of experiencing reluctance or refusal of European or multi-national customers to use our solutions and incurring regulatory penalties, which may have an adverse effect on our business.

Additionally, on November 17, 2022, the Digital Services Act (“DSA”) entered into force in the EU and includes new obligations to limit the spread of illegal content and illegal products online, increase the protection of minors, and provide users with more choice and transparency and allows for fines of up to 6% of annual turnover. The impact of the DSA on the overall industry, business models and our operations is uncertain, and these regulations could result in changes to our subscriptions or introduce new operational requirements and administrative costs each of which could have an adverse effect on our business, financial condition, and results of operations.

The European Commission has proposed new legislation to enhance privacy protections for users of communications services and to enhance protection for individuals against online tracking technologies. The proposed legislation, the Regulation on Privacy and Electronic Communications (the “e-Privacy Regulation”), is currently undergoing legislative scrutiny. When introduced, the e-Privacy Regulation is expected to impose greater potential liabilities upon communications service providers, including potential fines for the most serious of breaches of the greater of €20 million or 4% of worldwide annual turnover. New rules introduced by the e-Privacy Regulation are likely to include enhanced consent requirements for communications service providers in order to use communications content and communications metadata to deliver value added services, as well as restrict the use of data related to corporations and other non-natural persons. These restrictions, if adopted, may affect our future business growth in the EEA.

Further, the Data Security Law of China (“DSL”), which took effect on September 1, 2021, and the Personal Information Protection Law of China (“PIPL”), which took effect on November 1, 2021, implement comprehensive regulation of data and personal data processing activities across all industries and operations such as collecting, utilizing, processing,

sharing and transferring data and personal information in and out of China. The DSL and PIPL apply not only to the processing of data within China, but also cross-border data transfers as well as certain activities outside of China that relate to data originating from China. Restrictions imposed by the DSL and PIPL and uncertainty regarding their application in practice may impact us and our customers, and we may be required to implement modifications to our policies and practices in an effort to comply with these laws.

In the U.S., there are numerous federal and state laws governing the privacy and security of personal information. In particular, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) establishes privacy and security standards that limit the use and disclosure of individually identifiable health information and requires the implementation of administrative, physical, and technical safeguards to protect the privacy of protected health information and ensure the confidentiality, integrity, and availability of electronic protected health information by certain institutions. We act as a “Business Associate” through our relationships with certain customers and are thus directly subject to certain provisions of HIPAA. In addition, if we are unable to protect the privacy and security of protected health information, we could be found to have breached our contracts with customers with whom we have a Business Associate relationship and may also face regulatory liability. Additionally, we are subject to FCC regulations imposing obligations related to our use and disclosure of certain data related our interconnected VoIP service. If we experience a data security incident, we may be required by state law or FCC or other regulations to notify our customers and/or law enforcement. We may also be subject to Federal Trade Commission (“FTC”) enforcement actions if the FTC has reason to believe we have engaged in unfair or deceptive privacy or data security practices.

Noncompliance with laws and regulations relating to privacy and security of personal information, including HIPAA, or with contractual obligations under any Business Associate agreement may lead to significant fines, civil and criminal penalties, or liabilities. The U.S. Department of Health and Human Services (“HHS”) audits the compliance of Business Associates and enforces HIPAA privacy and security standards. HHS enforcement activity has become more significant over the last few years and HHS has signaled its intent to continue this trend. Violation of the FCC’s privacy rules can result in large monetary forfeitures and injunctive relief. The FTC has broad authority to seek monetary redress for affected consumers and injunctive relief. In addition to federal regulators, state attorneys general (and, in some states, individual residents) are authorized to bring civil actions seeking either injunctions or damages to the extent violations implicate the privacy of state residents. Class action lawsuits are common in the event of a data breach affecting financial or other forms of sensitive information.

Additionally, California has enacted the California Consumer Privacy Act (“CCPA”), which came into effect on January 1, 2020, with implementing regulations effective August 14, 2020. Pursuant to the CCPA, we are required, among other things, to make certain enhanced disclosures related to California residents regarding our use or disclosure of their personal information, allow California residents to opt-out of certain uses and disclosures of their personal information without penalty, provide Californians with other choices related to personal data in our possession, and obtain opt-in consent before engaging in certain uses of personal information relating to Californians under the age of 16. The California Attorney General may seek substantial monetary penalties and injunctive relief in the event of our non-compliance with the CCPA. The CCPA also allows for private lawsuits from Californians in the event of certain data breaches. Aspects of the CCPA remain uncertain, and we may be required to make modifications to our policies or practices in order to comply. Moreover, a new privacy law, the CPRA, was approved by California voters in November 2020. The CPRA significantly modifies the CCPA, potentially resulting in further uncertainty and requiring us to incur additional costs and expenses in an effort to comply. The CPRA created obligations relating to consumer data beginning on January 1, 2023, with enforcement beginning July 1, 2023. California residents’ rights under the CPRA to opt-out from the sale or sharing of their data may impact our marketing activities, particularly those that involve the use of third-party cookies on our websites. This may require that we implement specific contractual terms when we engage marketing entities to market our product and services and may limit our efforts to reach our target audience. Further, on March 2, 2021, Virginia enacted the Virginia Consumer Data Protection Act (“CDPA”), a comprehensive privacy statute that shares similarities with the CCPA, CPRA, and legislation proposed in other states. The CDPA is effective as of January 1, 2023. Colorado enacted a similar law, the Colorado Privacy Act, on June 8, 2021, which is effective as of July 1, 2023. Utah enacted a similar law, the Utah Consumer Privacy Act, on March 24, 2022, which is effective as of December 31, 2023, and Connecticut enacted a similar law, An Act Concerning Personal Data Privacy and Online Monitoring, on May 10, 2022, which is effective as of July 1, 2023. The U.S. federal government also is contemplating federal privacy legislation. On September 15, 2022, California passed the California Age-Appropriate Design Code Act, which will become enforceable on July 1, 2024. Many of these new and evolving laws and regulations have required us to incur costs and expenses, and will require us to incur additional costs and expenses, in our efforts to comply.

As Internet commerce and communication technologies continue to evolve, thereby increasing online service providers’ and network users’ capacity to collect, store, retain, protect, use, process, and transmit large volumes of personal information, increasingly restrictive regulation by federal, state, or foreign agencies becomes more likely.

While we try to comply with applicable data protection laws, regulations, standards, and codes of conduct, as well as our own posted privacy policies and contractual commitments to the extent possible, any actual or alleged failure by us to comply with any of the foregoing or to protect our users' privacy and data, including as a result of our systems being compromised by hacking or other malicious or surreptitious activity, could result in a loss of user confidence in our subscriptions and ultimately in a loss of users, which could materially and adversely affect our business.

Regulation of personal information is evolving, and new laws could further impact how we handle personal information or could require us to incur additional compliance costs, either of which could have an adverse impact on our operations. Further, our actual compliance, our customers' perception of our compliance, costs of compliance with such regulations, and obligations and customer concerns regarding their own compliance obligations (whether factual or in error) may limit the use and adoption of our subscriptions and reduce overall demand. Privacy-related concerns, including the inability or impracticality of providing advance notice to customers of privacy issues related to the use of our subscriptions, may cause our customers' customers to resist providing the personal data necessary to allow our customers to use our subscriptions effectively. Even the perception of privacy-related concerns, whether or not valid, may inhibit market adoption of our subscriptions in certain industries.

Additionally, due to the nature of our service, we are unable to maintain complete control over data security or the implementation of measures that reduce the risk of a data security incident. For example, our customers may accidentally disclose their passwords or store them on a mobile device that is lost or stolen, creating the perception that our systems are not secure against third-party access. Additionally, our third-party contractors in the Philippines, Georgia, Bulgaria and Spain, may have access to customer data; no personal customer data is processed or stored in Russia or Ukraine. If these or other third-party vendors violate applicable laws or our policies, such violations may also put our customers' information at risk and could in turn have a material and adverse effect on our business.

***Our emergency and E-911 calling services may expose us to significant liability.***

The FCC requires Internet voice communications providers, such as our company, to provide E-911 service in all geographic areas covered by the traditional wire-line E-911 network. Under the FCC's rules, Internet voice communications providers must transmit the caller's phone number and registered location information to the appropriate public safety answering point ("PSAP") for the caller's registered location. Our CLEC services are also required by the FCC and state regulators to provide E-911 service to the extent that they provide services to end users. We are also subject to similar requirements internationally.

In connection with the regulatory requirements that we provide access to emergency services dialing to our interconnected VoIP customers, we must obtain from each customer, prior to the initiation of or changes to service, the physical locations at which the service will first be used for each VoIP line. For subscriptions that can be utilized from more than one physical location, we must provide customers one or more methods of updating their physical location. Because we are not able to confirm that the service is used at the physical addresses provided by our customers, and because customers may provide an incorrect location or fail to provide updated location information, it is possible that emergency services calls may get routed to the wrong PSAP. If emergency services calls are not routed to the correct PSAP, and if the delay results in serious injury or death, we could be sued and the damages substantial. We are evaluating measures to attempt to verify and update the addresses for locations where our subscriptions are used.

In addition, customers may attempt to hold us responsible for any loss, damage, personal injury, or death suffered as a result of delayed, misrouted, or uncompleted emergency service calls or text messages, subject to any limitations on a provider's liability provided by applicable laws, regulations and our customer agreements.

***We rely on third parties to provide the majority of our customer service and support representatives and to fulfill various aspects of our E-911 service. If these third parties do not provide our customers with reliable, high-quality service, our reputation will be harmed, and we may lose customers.***

We offer customer support through both our online account management website and our toll-free customer support number in multiple languages. Our customer support is currently provided via a third-party provider located in the Philippines, as well as our employees in the U.S. Our third-party providers generally provide customer service and support to our customers without identifying themselves as independent parties. The ability to support our customers may be disrupted by natural disasters, inclement weather conditions, civil unrest, strikes, and other adverse events in the Philippines. Furthermore, as we expand our operations internationally, we may need to make significant expenditures and investments in our customer service and support to adequately address the complex needs of international customers, such as support in additional foreign



languages. We also use third parties to deliver onsite professional services to our customers in deploying our solutions. If these vendors do not deliver timely and high-quality services to our customers, our reputation could be damaged, and we could lose customers. In addition, third-party professional services vendors may not be available when needed, which would adversely impact our ability to deliver on our customer commitments.

We also contract with third parties to provide emergency services calls in the U.S., Canada, the U.K., and other jurisdictions in which we provide access to emergency services dialing, including assistance in routing emergency calls and terminating emergency services calls. Our domestic providers operate a national call center that is available 24 hours a day, seven days a week, to receive certain emergency calls and maintain PSAP databases for the purpose of deploying and operating E-911 services. We rely on providers for similar functions in other jurisdictions in which we provide access to emergency services dialing. On mobile devices, we rely on the underlying cellular or wireless carrier to provide emergency services dialing. Interruptions in service from our vendors could cause failures in our customers' access to E-911/999/112 services and expose us to liability and damage our reputation.

If any of these third parties do not provide reliable, high-quality service, or the service is not provided in compliance with regulatory requirements, our reputation and our business will be harmed. In addition, industry consolidation among providers of services to us may impact our ability to obtain these services or increase our costs for these services.

### **Risks Related to Intellectual Property**

#### ***Accusations of infringement of third-party intellectual property rights could materially and adversely affect our business.***

There has been substantial litigation in the areas in which we operate regarding intellectual property rights. For instance, we have recently and in the past been sued by third parties claiming infringement of their intellectual property rights and we may be sued for infringement from time to time in the future. Also, in some instances, we have agreed to indemnify our customers, resellers, and global service providers for expenses and liability resulting from claimed intellectual property infringement by our solutions. From time to time, we have received requests for indemnification in connection with allegations of intellectual property infringement and we may choose, or be required, to assume the defense and/or reimburse our customers and/or resellers and global service providers for their expenses, settlement and/or liability. In the past, we have settled infringement litigation brought against us; however, we cannot assure you that we will be able to settle any future claims or, if we are able to settle any such claims, that the settlement will be on terms favorable to us. Our broad range of technology may increase the likelihood that third parties will claim that we, or our customers and/or resellers, and global service providers, infringe their intellectual property rights.

We have in the past received, and may in the future receive, notices of claims of infringement, misappropriation or misuse of other parties' proprietary rights. Furthermore, regardless of their merits, accusations and lawsuits like these, whether against us or our customers, resellers, and global service providers, may require significant time and expense to defend, may negatively affect customer relationships, may divert management's attention away from other aspects of our operations and, upon resolution, may have a material adverse effect on our business, results of operations, financial condition, and cash flows.

Certain technology necessary for us to provide our subscriptions may, in fact, be patented by other parties either now or in the future. If such technology were validly patented by another person, we would have to negotiate a license for the use of that technology. We may not be able to negotiate such a license at a price that is acceptable to us or at all. The existence of such a patent, or our inability to negotiate a license for any such technology on acceptable terms, could force us to cease using the technology and cease offering subscriptions incorporating the technology, which could materially and adversely affect our business and results of operations.

If we, or any of our solutions, were found to be infringing on the intellectual property rights of any third party, we could be subject to liability for such infringement, which could be material. We could also be prohibited from using or selling certain subscriptions, prohibited from using certain processes, or required to redesign certain subscriptions, each of which could have a material adverse effect on our business and results of operations.

These and other outcomes may:

- result in the loss of a substantial number of existing customers or prohibit the acquisition of new customers;
- cause us to pay license fees for intellectual property we are deemed to have infringed;
- cause us to incur costs and devote valuable technical resources to redesigning our subscriptions;
- cause our cost of revenues to increase;

- cause us to accelerate expenditures to preserve existing revenues;
- cause existing or new vendors to require pre-payments or letters of credit;
- materially and adversely affect our brand in the marketplace and cause a substantial loss of goodwill;
- cause us to change our business methods or subscriptions;
- require us to cease certain business operations or offering certain subscriptions or features; and
- lead to our bankruptcy or liquidation.

***Our limited ability to protect our intellectual property rights could materially and adversely affect our business.***

We rely, in part, on patent, trademark, copyright, and trade secret law to protect our intellectual property in the U.S. and abroad. We seek to protect our technology, software, documentation and other information under trade secret and copyright law, which afford only limited protection. For example, we typically enter into confidentiality agreements with our employees, consultants, third-party contractors, customers, and vendors in an effort to control access to, use of, and distribution of our technology, software, documentation, and other information. These agreements may not effectively prevent unauthorized use or disclosure of confidential information and may not provide an adequate remedy in the event of such unauthorized use or disclosure, and it may be possible for a third party to legally reverse engineer, copy, or otherwise obtain and use our technology without authorization. In addition, improper disclosure of trade secret information by our current or former employees, consultants, third-party contractors, customers, or vendors to the public or others who could make use of the trade secret information would likely preclude that information from being protected as a trade secret.

We also rely, in part, on patent law to protect our intellectual property in the U.S. and internationally. Our intellectual property portfolio includes over 940 issued patents, including patents acquired from a strategic partnership transaction, which expire between 2023 and 2041. We also have 72 patent applications pending examination in the U.S. and 59 patent applications pending examination in foreign jurisdictions, all of which are related to U.S. applications. We cannot predict whether such pending patent applications will result in issued patents or whether any issued patents will effectively protect our intellectual property. Even if a pending patent application results in an issued patent, the patent may be circumvented or its validity may be challenged in various proceedings in United States District Court or before the U.S. Patent and Trademark Office, such as Post Grant Review or *Inter Partes* Review, which may require legal representation and involve substantial costs and diversion of management time and resources. We cannot assure completeness of the chain of title of acquired patents prior to the completion of the assignments. In addition, we cannot assure you that every significant feature of our solutions is protected by our patents, or that we will mark our solutions with any or all patents they embody. As a result, we may be prevented from seeking injunctive relief or damages, in whole or in part for infringement of our patents.

Further, in the future, we may “prune” our patent portfolio by not continuing to renew some of our patents in some jurisdictions or may decide to divest some of our patents.

The unlicensed use of our brand, including domain names, by third parties could harm our reputation, cause confusion among our customers and impair our ability to market our solutions and subscriptions. To that end, we have registered numerous trademarks and service marks and have applied for registration of additional trademarks and service marks and have acquired a large number of domain names in and outside the U.S. to establish and protect our brand names as part of our intellectual property strategy. If our applications receive objections or are successfully opposed by third parties, it will be difficult for us to prevent third parties from using our brand without our permission. Moreover, successful opposition to our applications might encourage third parties to make additional oppositions or commence trademark infringement proceedings against us, which could be costly and time consuming to defend against. If we are not successful in protecting our trademarks, our trademark rights may be diluted and subject to challenge or invalidation, which could materially and adversely affect our brand.

Despite our efforts to implement our intellectual property strategy, we may not be able to protect or enforce our proprietary rights in the U.S. or internationally (where effective intellectual property protection may be unavailable or limited). For example, we have entered into agreements containing confidentiality and invention assignment provisions in connection with the outsourcing of certain software development and quality assurance activities to third-party contractors located in Ukraine and formerly in Russia. We have also entered into an agreement containing a confidentiality provision with a third-party contractor located in the Philippines, where we have outsourced a significant portion of our customer support function. We cannot assure you that agreements with these third-party contractors or their agreements with their employees and contractors will adequately protect our proprietary rights in the applicable jurisdictions and foreign countries, as their respective laws may not protect proprietary rights to the same extent as the laws of the U.S. In addition, our competitors may independently develop technologies that are similar or superior to our technology, duplicate our technology in a manner that does not infringe our intellectual property rights or design around any of our patents. Furthermore, detecting and policing

unauthorized use of our intellectual property is difficult and resource-intensive. Moreover, litigation may be necessary in the future to enforce our intellectual property rights, to determine the validity and scope of the proprietary rights of others, or to defend against claims of infringement or invalidity. Such litigation, whether successful or not, could result in substantial costs and diversion of management time and resources and could have a material adverse effect on our business, financial condition, and results of operations.

***Our use of open source technology could impose limitations on our ability to commercialize our subscriptions.***

We use open source software in our platform on which our subscriptions operate. There is a risk that the owners of the copyrights in such software may claim that such licenses impose unanticipated conditions or restrictions on our ability to market or provide our subscriptions. If such owners prevail in such claim, we could be required to make the source code for our proprietary software (which contains our valuable trade secrets) generally available to third parties, including competitors, at no cost, to seek licenses from third parties in order to continue offering our subscriptions, to re-engineer our technology, or to discontinue offering our subscriptions in the event re-engineering cannot be accomplished on a timely basis or at all, any of which could cause us to discontinue our subscriptions, harm our reputation, result in customer losses or claims, increase our costs or otherwise materially and adversely affect our business and results of operations.

**Risks Related to Our Class A Common Stock, Our Notes and Our Charter Provisions**

***The market price of our Class A Common Stock is likely to be volatile and could decline.***

The stock market in general, and the market for SaaS and other technology-related stocks in particular, has been highly volatile. As a result, the market price and trading volume for our Class A Common Stock has been and may continue to be highly volatile, and investors in our Class A Common Stock may experience a decrease in the value of their shares, including decreases unrelated to our operating performance or prospects. Factors that could cause the market price of our Class A Common Stock to fluctuate significantly include:

- our operating and financial performance and prospects and the performance of other similar companies including our strategic partners;
- our quarterly or annual earnings or those of other companies in our industry;
- conditions that impact demand for our subscriptions;
- the public's reaction to our press releases, financial guidance, and other public announcements, and filings with the SEC;
- changes in earnings estimates or recommendations by securities or research analysts who track our Class A Common Stock;
- actual or perceived security breaches, or other privacy or cybersecurity incidents;
- market and industry perception of our success, or lack thereof, in pursuing our growth strategy;
- strategic actions by us or our competitors, such as acquisitions or restructurings;
- changes in government and other regulations;
- changes in accounting standards, policies, guidance, interpretations, or principles;
- arrival and departure of key personnel;
- sales of common stock by us, our investors, or members of our management team;
- changes in general market, economic, and political conditions in the U.S. and global economies or financial markets, including those resulting from natural disasters, telecommunications failure, cyber-attack, changes in diplomatic or trade relationships, civil unrest in various parts of the world, acts of war (including ongoing geopolitical tensions related to Russia's actions in Ukraine, resulting sanctions imposed by the U.S. and other countries, and retaliatory actions taken by Russia in response to such sanctions), terrorist attacks, or other catastrophic events, such as the global outbreak of COVID-19; and
- Geopolitical relations between the US and China.

Any of these factors may result in large and sudden changes in the trading volume and market price of our Class A Common Stock and may prevent investors from being able to sell their shares at or above the price they paid for their shares of our Class A Common Stock. Following periods of volatility in the market price of a company's securities, stockholders often file securities class-action lawsuits against such company. Our involvement in a class-action lawsuit could divert our senior management's attention and, if adversely determined, could have a material and adverse effect on our business, financial condition, and results of operations.

***For as long as the dual class structure of our common stock as contained in our charter documents is in effect, voting control will be concentrated with a limited number of stockholders that held our stock prior to our initial public offering, including primarily our founders and their affiliates, and limiting other stockholders' ability to influence corporate matters.***

Our Class B common stock, par value \$0.0001 per share ("Class B Common Stock" and, together with our Class A Common Stock, our "common stock"), has 10 votes per share, and our Class A Common Stock has one vote per share. Additionally, our Series A Convertible Preferred Stock has voting power measured on an as-converted to Class A Common Stock basis. Stockholders who hold shares of Class B Common Stock, including our founders and certain executive officers, and their affiliates, together hold approximately 54% of the voting power of our outstanding capital stock, and our founders, including our CEO and Chairman, together hold a majority of such voting power. As a result, for as long as the Class B voting structure remains in place, a small number of stockholders who acquired their shares prior to the completion of our initial public offering will continue to have significant influence over the management and affairs of our company and over the outcome of many matters submitted to our stockholders for approval, including the election of directors and significant corporate transactions, such as a merger, consolidation or sale of substantially all of our assets.

In addition, because of the ten-to-one voting ratio between our Class B and Class A Common Stock, the holders of Class B Common Stock collectively will continue to control many matters submitted to our stockholders for approval even if their stock holdings represent less than 50% of the voting power of the outstanding shares of our capital stock. This concentrated control will limit your ability to influence corporate matters for the foreseeable future, and, as a result, the market price of our Class A Common Stock could be adversely affected.

Future transfers by holders of Class B Common Stock will generally result in those shares converting to Class A Common Stock, which may have the effect, over time, of increasing the relative voting power of those holders of Class B Common Stock who retain their shares in the long term. If, for example, Mr. Shmunis retains a significant portion of his holdings of Class B Common Stock for an extended period of time, he could, in the future, control a majority of the combined voting power of our capital stock. As a board member, Mr. Shmunis owes fiduciary duties to our stockholders and must act in good faith in a manner he reasonably believes to be in the best interests of our stockholders. As a stockholder, even a controlling stockholder, Mr. Shmunis is generally entitled to vote his shares in his own interests, which may not always be in the interests of our stockholders generally.

***We have never paid cash dividends and do not anticipate paying any cash dividends on our common stock.***

We currently do not plan to declare dividends on shares of our common stock in the foreseeable future and plan to, instead, retain any earnings to finance our operations and growth. Because we have never paid cash dividends and do not anticipate paying any cash dividends on our common stock in the foreseeable future, the only opportunity to achieve a return on an investor's investment in our company will be if the market price of our Class A Common Stock appreciates and the investor sells its shares at a profit. There is no guarantee that the price of our Class A Common Stock that will prevail in the market will ever exceed the price that an investor pays.

***We may not have the ability to raise the funds necessary to settle conversions of the Notes in cash or to repurchase the Notes upon a fundamental change or pay the principal amount of the Notes at maturity, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the Notes.***

Holders of either series of Notes will have the right to require us to repurchase all or a portion of such Notes upon the occurrence of a fundamental change before the applicable maturity date at a repurchase price equal to 100% of the principal amount of such Notes to be repurchased, plus any accrued and unpaid special interest thereon, if any, as set forth in the applicable indenture governing the Notes. In addition, upon conversion of the Notes of the applicable series, we will be required to make cash payments in respect of such Notes being converted, as set forth in the applicable indenture governing the Notes. Moreover, we will be required to repay the Notes of the applicable series in cash at their respective maturity unless earlier converted, redeemed or repurchased. However, even though we entered into a new credit agreement on February 14, 2023, we cannot assure you that we will have enough available cash on hand or be able to obtain financing at the time we are required to make repurchases of such Notes surrendered therefor or pay cash with respect to such series of Notes being converted or at their respective maturity. Refer to Note 16 – *Subsequent Events* of the notes to the consolidated financial statements included in Part II, Item 8, "Consolidated Financial Statements and Supplementary Data" in this Annual Report on Form 10-K for additional information on the new credit agreement.

In addition, our ability to repurchase the Notes of the applicable series or to pay cash upon conversions of the Notes or at their respective maturity may be limited by law, regulatory authority, or agreements governing our future indebtedness. Our

failure to repurchase such Notes at a time when the repurchase is required by the applicable indenture governing the Notes or to pay cash upon conversions of such Notes or at their respective maturity as required by the applicable indenture governing the Notes would constitute a default under such indenture. A default under such indenture, or the fundamental change itself, could also lead to a default under agreements governing our future indebtedness. Moreover, the occurrence of a fundamental change under the applicable indenture governing the Notes could constitute an event of default under any such agreement. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase such series of Notes or make cash payments upon conversions thereof.

***The conditional conversion feature of each series of Notes, if triggered, may adversely affect our financial condition and operating results.***

In the event the conditional conversion feature of each series of Notes is triggered, holders of the Notes of the applicable series will be entitled under the applicable indenture governing the Notes to convert such Notes at any time during specified periods at their option. If one or more holders of a series elect to convert their Notes, we would be required to settle a portion or all of our conversion obligation in cash, which could adversely affect our liquidity. In addition, in certain circumstances, such as conversion by holders or redemption, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of such series of Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The capped call transactions may affect the value of the Notes and our Class A Common Stock and we are subject to counterparty risk.***

In connection with the issuances of the Notes, we entered into capped call transactions with the counterparties with respect to each series of Notes. The capped call transactions cover, subject to customary adjustments, the number of shares of our Class A Common Stock initially underlying each series of Notes. The capped call transactions are expected to offset the potential dilution as a result of conversion of the Notes.

The counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our Class A Common Stock and/or purchasing or selling our Class A Common Stock or other securities of ours in secondary market transactions at any time prior to the respective maturity of the Notes (and are likely to do so on each exercise date of the capped call transactions). This activity could also cause or prevent an increase or a decrease in the market price of our Class A Common Stock.

We do not make any representation or prediction as to the direction or magnitude of any potential effect that the transactions described above may have on the price of each series of Notes or the shares of our Class A Common Stock. In addition, we do not make any representation that these transactions will not be discontinued without notice.

In addition, the counterparties to the capped call transactions are financial institutions and we will be subject to the risk that one or more of the counterparties may default or otherwise fail to perform, or may exercise certain rights to terminate, their obligations under the capped call transactions. If a counterparty to one or more capped call transaction becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at the time under such transaction. Our exposure will depend on many factors but, generally, it will increase if the market price or the volatility of our Class A Common Stock increases. Upon a default or other failure to perform, or a termination of obligations, by a counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our Class A Common Stock. We can provide no assurances as to the financial stability or viability of the counterparties.

***The holders of Series A Convertible Preferred Stock are entitled to vote on an as-converted to Class A Common Stock basis and have rights to approve certain actions.***

The holders of our Series A Convertible Preferred Stock are generally entitled to vote with the holders of our common stock on all matters submitted for a vote of holders of shares of our capital stock (voting together with the holders of shares of common stock as one class) on an as-converted basis. However, the consent of the holders of a majority of the outstanding shares of Series A Convertible Preferred Stock (voting together as a separate class) is required in order for us to take certain actions, including (i) any amendment, alteration, or repeal of (A) any provision of our certificate of incorporation or bylaws that adversely affects, in any material respect, the rights, preferences, privileges, or voting power of the Series A Convertible Preferred Stock or the holders thereof or (B) any provision of our certificate of designations, (ii) issuances of securities that are

senior to, or equal in priority with, the Series A Convertible Preferred Stock as to dividend rights or rights on the distribution of assets on liquidation, (iii) any increase or decrease in the authorized number of shares of Series A Convertible Preferred Stock or issuances thereof, and (iv) any dividend on our common stock that is a one-time special dividend of \$100,000,000 or more. As a result, the holders of Series A Convertible Preferred Stock may in the future have the ability to influence the outcome of certain matters affecting our governance and capitalization.

***The issuance of shares of our Series A Convertible Preferred Stock reduces the relative voting power of holders of our common stock, and the conversion of those shares into shares of our Class A Common Stock would dilute the ownership of our common stockholders and may adversely affect the market price of our Class A Common Stock.***

The holders of our Series A Convertible Preferred Stock are generally entitled to vote, on an as-converted basis, together with holders of our common stock, on all matters submitted to a vote of the holders of our capital stock, which reduces the relative voting power of the holders of our common stock. In addition, the conversion of our Series A Convertible Preferred Stock into Class A Common Stock would dilute the ownership interest of existing holders of our common stock, and any conversion of the Series A Convertible Preferred Stock would increase the number of shares of our Class A Common Stock available for public trading, which could adversely affect prevailing market prices of our Class A Common Stock.

***Our Series A Convertible Preferred Stock has rights, preferences and privileges that are not held by, and are preferential to the rights of, our common stockholders, which could adversely affect our liquidity and financial condition.***

The holders of our Series A Convertible Preferred Stock have the right to receive payments as to dividend rights and on account of the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of our business before any payment may be made to holders of any other class or series of capital stock. In addition, upon prior written notice of certain change of control events, all shares of Series A Convertible Preferred Stock will automatically be redeemed by us for a repurchase price equal to (i) \$1,000 per share of each share of Series A Convertible Preferred Stock (the “Liquidation Preference”) or (ii) if the applicable change of control occurs before the second anniversary of November 9, 2021, 1.5 multiplied by the Liquidation Preference of such share of Series A Convertible Preferred Stock. These dividend and share repurchase obligations could impact our liquidity and reduce the amount of cash flows available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes. Our obligations to the holders of our Series A Convertible Preferred Stock could also limit our ability to obtain additional financing, which could have an adverse effect on our financial condition. The preferential rights could also result in divergent interests between the holders of our Series A Convertible Preferred Stock and holders of our common stock.

***We cannot guarantee that our stock repurchase program will be fully implemented or that it will enhance long-term stockholder value.***

On February 13, 2023, our board of directors authorized a share repurchase program under which we may repurchase up to \$175 million of our outstanding Class A Common Stock, subject to certain limitations. We plan to fund repurchases under this program from our future cash flow generation, as well as from additional potential sources of cash including capped calls associated with the Notes. Under the program, share repurchases may be made at our discretion from time to time in open market transactions, privately negotiated transactions, or other means. The program does not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares of our Class A Common Stock. Our board had approved a previous share repurchase program in the past, and as of December 31, 2022, we have repurchased approximately \$100 million of our Class A Common Stock under these programs. The timing and number of any future shares repurchased under the program will depend on a variety of factors, including stock price, trading volume, and general business and market conditions. Our board of directors will review the program periodically and may authorize adjustments of its terms if appropriate. As a result, there can be no guarantee around the timing or volume of our share repurchases. The program could affect the price of our Class A Common Stock, increase volatility and diminish our cash reserves. The program may be suspended or terminated at any time and, even if fully implemented, may not enhance long-term stockholder value.

***Anti-takeover provisions in our certificate of incorporation and bylaws and under Delaware corporate law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our Class A Common Stock.***

Provisions in our certificate of incorporation and bylaws may have the effect of delaying or preventing a change of control or changes in our management. Our certificate of incorporation and bylaws include provisions that:

- authorize our board of directors to issue, without further action by the stockholders, up to 100,000,000 shares of undesignated preferred stock, 200,000 share of which are currently designated as Series A Convertible Preferred Stock;
- require that, once our outstanding shares of Class B Common Stock represent less than a majority of the combined voting power of our common stock, any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent; specify that special meetings of our stockholders can be called only by our board of directors, the Chairman of our board of directors, or our Chief Executive Officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;
- prohibit cumulative voting in the election of directors;
- provide that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum;
- state that the approval of our board of directors or the holders of a supermajority of our outstanding shares of capital stock is required to amend our bylaws and certain provisions of our certificate of incorporation; and
- reflect two classes of common stock, as discussed above.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder without obtaining specified approvals.

### **General Risk Factors**

#### ***Changes in effective tax rates, or adverse outcomes resulting from examination of our income or other tax returns, could adversely affect our results of operations and financial condition.***

Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expiration of, or lapses in, the research and development tax credit laws;
- expiration or non-utilization of net operating loss carryforwards;
- tax effects of share-based compensation;
- expansion into new jurisdictions;
- potential challenges to and costs related to implementation and ongoing operation of our intercompany arrangements;
- changes in tax laws and regulations and accounting principles, or interpretations or applications thereof; and
- certain non-deductible expenses as a result of acquisitions.

Any changes in our effective tax rate could adversely affect our results of operations.

#### ***Changes in U.S. and foreign tax laws could have a material adverse effect on our business, cash flow, results of operations or financial conditions.***

We are subject to tax laws, regulations, and policies of the U.S. federal, state, and local governments and of comparable taxing authorities in foreign jurisdictions. Changes in tax laws, as well as other factors, could cause us to experience fluctuations in our tax obligations and effective tax rates in 2018 and thereafter and otherwise adversely affect our tax positions and/or our tax liabilities. For example, in 2019, France introduced a digital services tax at a rate of 3% on revenues derived from digital activities in France, and other jurisdictions are proposing or could introduce similar laws in the future. In addition, the United States recently introduced a 1% excise tax on stock buybacks and a 15% alternative minimum tax on adjusted financial statement income. Many countries, including the United States, and organizations such as the Organization for Economic Cooperation and Development are also actively considering changes to existing tax laws or have proposed or enacted new laws that could increase our tax obligations in countries where we do business or cause us to change the way we operate our business. Any of these developments or changes in federal, state, or international tax laws or tax rulings could

adversely affect our effective tax rate and our operating results. There can be no assurance that our effective tax rates, tax payments, tax credits, or incentives will not be adversely affected by these or other developments or changes in law.

***If our internal control over financial reporting is not effective, it may adversely affect investor confidence in our company.***

Pursuant to Section 404 of the Sarbanes-Oxley Act, our independent registered public accounting firm, KPMG LLP, is required to and has issued an attestation report as of December 31, 2022. While management concluded internal control over financial reporting was at a reasonable assurance level as of December 31, 2022, there can be no assurance that material weaknesses will not be identified in the future. 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 our annual or interim financial statements will not be prevented or detected on a timely basis. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective. As a result, we may need to undertake various actions, such as implementing new internal controls and procedures and hiring accounting or internal audit staff. Our remediation efforts may not enable us to avoid a material weakness in the future.

If our independent registered public accounting firm is unable to express an opinion on the effectiveness of our internal controls, we could lose investor confidence in the accuracy and completeness of our financial reports, which could cause the price of our Class A Common Stock to decline, and we may be subject to investigation or sanctions by the SEC.

***The nature of our business requires the application of complex revenue and expense recognition rules and the current legislative and regulatory environment affecting generally accepted accounting principles is uncertain. Significant changes in current principles could affect our financial statements going forward and changes in financial accounting standards or practices may cause adverse, unexpected financial reporting fluctuations and harm our operating results.***

The accounting rules and regulations that we must comply with are complex and subject to interpretation by the Financial Accounting Standards Board (the “FASB”), the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. Recent actions and public comments from the FASB and the SEC have focused on the integrity of financial reporting and internal controls. In addition, many companies’ accounting policies are being subject to heightened scrutiny by regulators and the public. Further, the accounting rules and regulations are continually changing in ways that could materially impact our financial statements.

We cannot predict the impact of future changes to accounting principles or our accounting policies on our financial statements going forward, which could have a significant effect on our reported financial results and could affect the reporting of transactions completed before the announcement of the change. While we are not aware of any specific event or circumstance that would require a material update to our estimates, judgments or assumptions, this may change in the future. In addition, if we were to change our critical accounting estimates, including those related to the recognition of subscription revenue and other revenue sources, our operating results could be significantly affected.

***Our estimates or judgments relating to our critical accounting policies may be based on assumptions that change or prove to be incorrect, including with respect to our recoverability assessment for prepaid sales commission balances with Avaya, which could cause our results of operations to fall below expectations of securities analysts and investors, resulting in a decline in the market price of our Class A common stock.***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. The significant estimates made by management affect revenues, the allowance for doubtful accounts, valuation of long-term investments, deferred and prepaid sales commission costs, goodwill, useful lives of intangible assets, share-based compensation, capitalization of internally developed software, return reserves, provision for income taxes, uncertain tax positions, loss contingencies, sales tax liabilities, and accrued liabilities. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as described in the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” The results of these estimates form the basis for making judgments about the recognition and measurement of certain assets and liabilities and revenue and expenses that is not readily apparent from other sources. Our accounting policies that involve judgment include those related to revenues the allowance for doubtful accounts, valuation of long-term investments, deferred and prepaid sales commission costs, goodwill, useful lives of intangible assets, share-based compensation, capitalization of internally developed software, return



reserves, provision for income taxes, uncertain tax position, loss contingencies, sales tax liabilities and accrued liabilities. If our assumptions change or if actual circumstances differ from those in our assumptions, our results of operations could be adversely affected, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our Class A common stock.

In particular, in connection with the Avaya partnership, we paid Avaya an advance predominately in stock, predominantly for future commissions for each qualified unit of Avaya Cloud Office by RingCentral sold during the term of the partnership. Under the original terms of the strategic partnership with Avaya, the unutilized prepaid sales commission balance was to be repaid to us at the end of the contractual term. On December 13, 2022, Avaya filed a Form 8-K disclosing ongoing discussions regarding one or more potential financings, refinancings, recapitalizations, reorganizations, restructurings or investment transactions. In light of public disclosures about the likelihood of Avaya's financial restructuring via Chapter 11, we recorded a non-cash asset write-down charge of \$279.3 million for the year ended December 31, 2022, out of which \$21.7 million of this balance was accrued interest and was recorded in other income (expense) in the Consolidated Statement of Operations. Further, on February 14, 2023, Avaya initiated an expedited, prepackaged financial restructuring via Chapter 11 with the support of certain of its financial stakeholders, including us. In connection therewith, we and Avaya entered into a new extended and expanded partnership arrangement pursuant to which, among other things, ACO remains Avaya's exclusive UCaaS offering and Avaya agreed to certain minimum volume commitments. As part of the new agreements, we and Avaya agreed to a revised go-to-market incentive structure intended to drive migration of customers to ACO. Avaya's contemplated prepackaged financial restructuring plan contemplates that the new partnership agreements between us and Avaya will be assumed and survive Avaya's emergence from Chapter 11 and that the shares of Avaya Series A Preferred Stock held by us will be cancelled without any consideration.

***Our corporate headquarters, one of our data centers and co-location facilities, our third-party customer service and support facilities, and a research and development facility are located near known earthquake fault zones, and the occurrence of an earthquake, tsunami, or other catastrophic disaster could damage our facilities or the facilities of our contractors, which could cause us to curtail our operations.***

Our corporate headquarters and many of our data centers, co-location and research and development facilities, and third-party customer service call centers are located in California, Florida, and several countries in Asia, including the Philippines and Australia. All of these locations are near known earthquake fault zones, which are vulnerable to damage from earthquakes and tsunamis, or are in areas subject to hurricanes. We and our contractors are also vulnerable to other types of disasters, such as power loss, fire, floods, pandemics such as the global outbreak of COVID-19, cyber-attack, war (including ongoing geopolitical tensions related to Russia's actions in Ukraine, resulting sanctions imposed by the U.S. and other countries, and retaliatory actions taken by Russia in response to such sanctions), political unrest, and terrorist attacks and similar events that are beyond our control. If any disasters were to occur, our ability to operate our business could be seriously impaired, and we may endure system interruptions, reputational harm, loss of intellectual property, delays in our subscriptions development, lengthy interruptions in our services, breaches of data security, and loss of critical data, all of which could harm our future results of operations. In addition, we do not carry earthquake insurance and we may not have adequate insurance to cover our losses resulting from other disasters or other similar significant business interruptions. Any significant losses that are not recoverable under our insurance policies could seriously impair our business and financial condition.

***If research analysts do not publish research or reports about our business, or if they issue unfavorable commentary or downgrade our Class A Common Stock, our stock price and trading volume may decline.***

The trading market for our Class A Common Stock will depend in part on the research and reports that research analysts publish about us and our business. If we do not maintain adequate research coverage or if one or more analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, the price of our Class A Common Stock may decline. If one or more of the research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our Class A Common Stock may decrease, which could cause our stock price or trading volume to decline.

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

None.

**ITEM 2. PROPERTIES**

Our corporate headquarters is located in Belmont, California, and consists of approximately 110,000 square feet of office space under leases that expire in July 2026.

We also lease office space in Denver, Colorado; Charlotte, North Carolina; Dallas, Texas; London, England; Paris, France; Tel Aviv, Israel; Xiamen and Hangzhou, China; and other small offices worldwide. In addition, we lease space from third-party datacenter hosting facilities under co-location agreements that support our cloud infrastructure, the most significant locations being Vienna and Ashburn, Virginia; San Jose and Santa Clara, California; Chicago, Illinois; Amsterdam, the Netherlands; Zurich, Switzerland; Frankfurt, Germany; Bangalore and Mumbai, India; Johannesburg, South Africa; and other small locations worldwide. We believe that we will be able to obtain additional space at other locations at commercially reasonable terms to support our continuing expansion.

**ITEM 3. LEGAL PROCEEDINGS**

Information with respect to this item may be found in Note 8 – *Commitments and Contingencies* in the accompanying notes to the consolidated financial statements included in Part II, Item 8, “Consolidated Financial Statements and Supplementary Data” of this Annual Report on Form 10-K, under “Legal Matters” which is incorporated herein by reference.

**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 for Common Stock**

Our Class A Common Stock has been listed on the New York Stock Exchange under the symbol “RNG” since September 27, 2013.

Our Class B Common Stock is not listed or traded on any stock exchange.

**Dividend Policy**

We have never declared or paid cash dividends on our capital stock. We currently intend to retain any future earnings for use in the operation of our business and do not intend to declare or pay any cash dividends in the foreseeable future. Any further determination to pay dividends on our capital stock will be at the discretion of our board of directors, subject to applicable laws, and will depend on our financial condition, results of operations, capital requirements, general business conditions, and other factors that our board of directors considers relevant.

**Stockholders**

As of February 14, 2023, there were 15 stockholders of record of our Class A Common Stock and Class B Common Stock. Because most of our shares of Class A Common Stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of beneficial stockholders represented by these record holders.

**Sales of Unregistered Equity Securities and Use of Proceeds**

We did not sell any equity securities which were not registered under the Securities Act during the fiscal year ended December 31, 2022 that were not otherwise disclosed in our Quarterly Reports on Form 10-Q or our Current Reports on Form 8-K.

**Securities Authorized for Issuance under Equity Compensation Plans**

Information regarding the securities authorized for issuance under our equity compensation plans can be found under Item 12 in this Annual Report on Form 10-K.

**Issuer Purchases of Equity Securities**

The following table summarizes the share repurchase activity of our Class A Common Stock for the three months ended December 31, 2022 (in thousands, except per-share amounts):

| Period                                | Total number of shares purchased <sup>(1)</sup> | Average price paid per share | Total number of shares purchased as part of publicly announced plans or programs <sup>(1)</sup> | Approximate dollar value of shares that may yet be purchased under the program <sup>(1)</sup> |
|---------------------------------------|---|------------------------------|---|---|
| October 1, 2022 to October 31, 2022   | —   | \$ —                         | —   | 55,013  |
| November 1, 2022 to November 30, 2022 | 1,314,610                                       | \$ 37.12                     | 1,314,610   | 5,249   |
| December 1, 2022 to December 31, 2022 | 142,465   | \$ 35.08                     | 142,465   | 252   |
| Total                                 | 1,457,075                                       |                              | 1,457,075   |   |

(1) In December 2021, our board of directors authorized a share repurchase program to repurchase up to \$100 million of the Company’s outstanding shares of Class A Common Stock. Under the program, share repurchases were permitted to be made at the Company’s discretion from time to time in open market transactions, privately negotiated transactions, or other means. We completed our Share Repurchase Program on December 31, 2022. On February 13, 2023, the Board authorized another share repurchase program to repurchase up to \$175 million of the Company’s outstanding shares of Class A Common Stock. Under this share repurchase program, share repurchases were permitted to be made at the Company’s discretion from time to time in open market transactions, privately negotiated transactions, or other means. Please refer to

Note 9 – *Stockholders’ Deficit and Convertible Preferred Stock* in the accompanying notes to the consolidated financial statements included in Part II, Item 8, “Consolidated Financial Statements and Supplementary Data” of this Annual Report on Form 10-K for additional information.

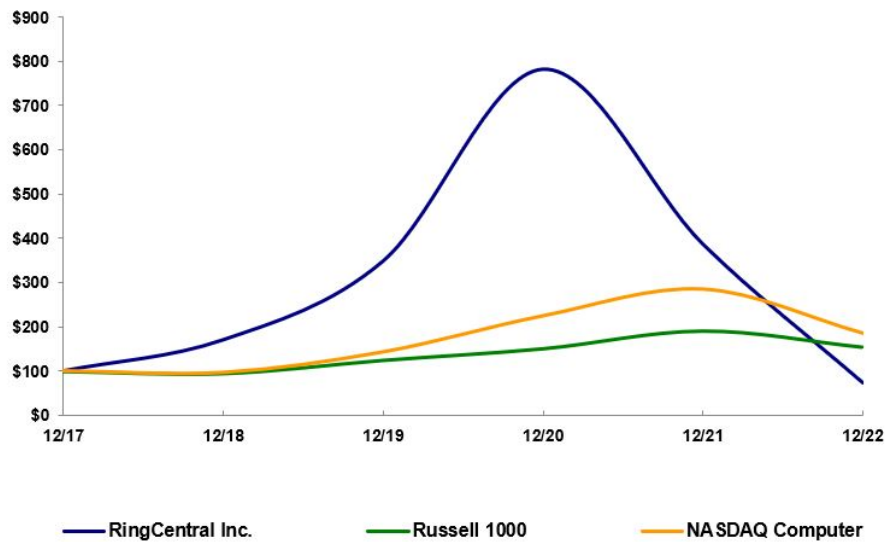
### Stock Performance Graph

*The following shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or incorporated by reference into any of our other filings under the Exchange Act or the Securities Act of 1933, as amended, except to the extent we specifically incorporate it by reference into such filing.*

The graph below matches RingCentral Inc.’s cumulative 5-year total shareholder return on common stock with the cumulative total returns of the Russell 1000 index and the NASDAQ Computer index. The graph tracks the performance of a \$100 investment in our common stock and in each index (with the reinvestment of all dividends) from December 31, 2017 to December 31, 2022. The stock price performance on the following graph is not intended to forecast or be indicative of future stock price performance of our Class A Common Stock.

#### COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\*

Among RingCentral Inc., the Russell 1000 Index and the NASDAQ Computer Index



\*\$100 invested on 12/31/17 in stock or index, including reinvestment of dividends. Fiscal year ending December 31.

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*The stock price performance included in this graph is not necessarily indicative of future stock price performance.*

**ITEM 6. [Reserved]**

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

*The following discussion of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and notes thereto included elsewhere in this Annual Report on Form 10-K. As discussed in the section entitled "Special Note Regarding Forward-Looking Statements," the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ significantly from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to these differences include, but are not limited to, those discussed below and elsewhere in this report, particularly in the section entitled "Risk Factors" included under Part I, Item 1A.*

*This section of this Form 10-K generally discusses 2022 and 2021 items and year-to-year comparisons between 2022 and 2021. Discussion regarding our financial condition and results of operations for fiscal 2021 as compared to fiscal 2020 is included in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on March 1, 2022, as amended, which information is incorporated herein by reference.*

### Overview

We are a leading provider of global enterprise cloud communications, video meetings, collaboration, and contact center software-as-a-service ("SaaS") solutions. We believe that our innovative, cloud-based communication and contact center solutions disrupt the large market for business communications and collaboration by providing flexible and cost-effective solutions that support mobile and distributed workforces. We enable convenient and effective communications for organizations across all their locations and employees, enabling them to be more productive and more responsive.

Our cloud-based business communications and collaboration solutions are designed to be easy to use, providing a user identity across multiple locations and devices, including smartphones, tablets, PCs and desk phones. Our solutions can be deployed rapidly and configured and managed easily. Our cloud-based solutions are location and device independent and better suited to address the needs of modern mobile and global enterprise workforces than are legacy on-premise systems. Through our open Application Programming Interface (API) platform, we enable third-party developers and customers to integrate our solution with leading business applications to customize their own business workflows.

We have a portfolio of cloud-based offerings that are subscription based, made available at different rates varying by the specific functionalities, services, and number of users. We primarily generate revenues from the sale of subscriptions to our offerings. Our subscription plans have monthly, annual, or multi-year contractual terms. We believe that this flexibility in contract duration is important to meet the different needs of our customers. For the years ended December 31, 2022, 2021, and 2020, subscriptions revenues accounted for 90% or more of our total revenues. The remainder of our revenues has historically been primarily comprised of product revenues from the sale of pre-configured phones and professional services. We do not develop or manufacture physical phones and offer it as a convenience for a total solution to our customers in connection with subscriptions to our services; however, in some cases, we have built "interoperability" between MVP and third-party hardware devices. We rely on third-party providers to develop and manufacture these devices and fulfillment partners to successfully serve our customers.

We continue to support our direct inside sales force while also developing indirect sales channels to market our brand and our subscription offerings. Our indirect sales channels who sell our solutions consist of:

- Regional and global network of resellers and distributors;
- Strategic partners who market and sell our MVP and solutions, including co-branded solutions. Such partnerships include Mitel, Amazon, ALE, Avaya, Atos, and Unify.
- Global Service Providers including AT&T, TELUS, BT, Vodafone, Verizon, DT, 1&1 Versatel in Germany, Ecotel in Germany, MCM in Mexico, Frontier, Charter Communications and others.

Our revenue growth has primarily been driven by our flagship RingCentral MVP, RingCentral customer engagement solutions product offering, recurring license and other fees, derived from sales through our direct and indirect sales channels, including resellers and distributors, strategic partners and global service providers, which has resulted in an increased number of customers, relatively stable average subscription revenue per user, and relatively stable retention of our existing customer and user base. While average subscription revenue per user has been relatively stable, given competitive pressures in the market, we may see a reduction of average subscription revenue per user, and/or a decrease in acquisition and renewal rates, and/or an increase in down-sell and churn in the future. We define a “customer” as any party that purchases or subscribes to our products and services directly or indirectly through our channel partners. As of December 31, 2022, we had customers from a range of industries, including financial services, education, healthcare, legal services, real estate, retail, technology, insurance, construction, hospitality, and state and local government, among others. For the years ended December 31, 2022, 2021 and 2020, the vast majority of our total revenues were generated in the U.S. and Canada, although we expect the percentage of our total revenues derived outside of the U.S. and Canada to grow as we continue to expand internationally.

The growth of our business and our future success depend on many factors, including our ability to expand our customer base to larger customers, expand our indirect sales channels, continue to innovate, grow revenues from our existing customer base, expand our distribution channels, and scale internationally.

### ***Macroeconomic Conditions and Other Factors***

We are subject to risks and exposures, including those caused by the current macroeconomic environment, the Russia-Ukraine conflict and the COVID-19 pandemic.

Macroeconomic factors include increased inflation, increased interest rates, supply chain disruptions, decreased economic output and fluctuations in currency exchange rates, all of which can cause uncertainty. We have experienced sales cycles normalizing to pre-COVID norms and more cautious buying behavior from larger customers manifesting itself in smaller initial deployments. We also noted sales cycle times for up-market customers elongated incrementally in 2022, as customers often required additional approvals before making purchase decisions. We anticipate this behavior may persist until the macroenvironment becomes less uncertain. Also during the year, the United States Dollar has strengthened significantly against certain foreign currencies, particularly against the British Pound Sterling, Euro and Canadian Dollar. If these conditions continue, they could have an adverse impact on our results. We continuously monitor the impact of these circumstances on our business and financial results, as well as the overall global economy and geopolitical landscape. The implications of macroeconomic conditions on our business, results of operations and overall financial position, particularly in the long term, remain uncertain.

We had previously outsourced some of our software development and design, quality assurance, and operations activities to third-party contractors that have employees and consultants located in Odesa, Ukraine, and St. Petersburg, Russia. In 2022, we relocated some of their personnel to other countries and currently have no third-party contractors or employees in Russia. During the year ended December 31, 2022, direct and incremental expenses associated with our relocation efforts was \$21.9 million. We do not store or process any personal customer data in Russia or Ukraine and are not materially dependent on operations in these locations to continue to provide our core services. Further discussion of the potential impact of the Russian invasion of Ukraine on our business can be found in the section titled “Risk Factors” included in Part II, Item 1A above.

In response to the COVID-19 pandemic we adopted several measures to support the health and well-being of our global employees, customers, partners and communities. Such measures included temporarily requiring the vast majority of our employees to work remotely, suspending non-essential travel worldwide for our employees, and shifting some of our customer and industry events to virtual-only experiences. Beginning in the first quarter of 2022, we started to re-open our offices in the United States and other locations globally for employees to return. We have taken recommended measures to protect our employees who return to the office that include respecting occupancy limitations applicable to our facilities and implementing vaccination requirements; among other safety measures. We have also introduced company-wide programs to support the mental well-being of our employees such as providing virtual wellness classes. As we continue to monitor the actual and potential effects of the COVID-19 pandemic across our business, we may further adjust our policies depending on the severity of, or a spike in, COVID-19 or as may be required or recommended by federal, foreign, state or local authorities.

Further discussion of the potential impacts of the COVID-19 pandemic on our business can be found in the section titled “Risk Factors” included in Part I, Item 1A above.

**Key Business Metrics**

In addition to United States generally accepted accounting principles (“U.S. GAAP”) and financial measures such as total revenues, gross margin, and cash flows from operations, we regularly review a number of key business metrics to evaluate growth trends, measure our performance, and make strategic decisions. We discuss revenues and gross margin under “Results of Operations”, and cash flow from operations and free cash flows under “Liquidity and Capital Resources.” Other key business metrics are discussed below.

**Annualized Exit Monthly Recurring Subscriptions**

We believe that our Annualized Exit Monthly Recurring Subscriptions (“ARR”) is a leading indicator of our anticipated subscriptions revenues. We believe that trends in revenue are important to understanding the overall health of our business, and we use these trends in order to formulate financial projections and make strategic business decisions. Our ARR equals our Monthly Recurring Subscriptions multiplied by 12. Our Monthly Recurring Subscriptions equals the monthly value of all customer recurring charges at the end of a given month. For example, our Monthly Recurring Subscriptions at December 31, 2022 was \$175.0 million. As such, our ARR at December 31, 2022 was \$2.1 billion compared to \$1.8 billion at December 31, 2021.

**Net Monthly Subscription Dollar Retention Rate**

We believe that our Net Monthly Subscription Dollar Retention Rate provides insight into our ability to retain and grow subscriptions revenue, as well as our customers’ potential long-term value to us. We believe that our ability to retain our customers and expand their use of our solutions over time is a leading indicator of the stability of our revenue base and we use these trends in order to formulate financial projections and make strategic business decisions. We define our Net Monthly Subscription Dollar Retention Rate as (i) one plus (ii) the quotient of Dollar Net Change divided by Average Monthly Recurring Subscriptions.

We define Dollar Net Change as the quotient of (i) the difference of our Monthly Recurring Subscriptions at the end of a period minus our Monthly Recurring Subscriptions at the beginning of a period minus our Monthly Recurring Subscriptions at the end of the period from new customers we added during the period, all divided by (ii) the number of months in the period. We define our Average Monthly Recurring Subscriptions as the average of the Monthly Recurring Subscriptions at the beginning and end of the measurement period.

For example, if our Monthly Recurring Subscriptions were \$118 at the end of a quarterly period and \$100 at the beginning of the period, and \$20 at the end of the period from new customers we added during the period, then the Dollar Net Change would be equal to (\$0.67), or the amount equal to the difference of \$118 minus \$100 minus \$20, all divided by three months. Our Average Monthly Recurring Subscriptions would equal \$109, or the sum of \$100 plus \$118, divided by two. Our Net Monthly Subscription Dollar Retention Rate would then equal 99.4%, or approximately 99%, or one plus the quotient of the Dollar Net Change divided by the Average Monthly Recurring Subscriptions.

Our key business metrics for the five quarterly periods ended December 31, 2022 were as follows (dollars in millions):

|   | December 31, 2022 | September 30, 2022 | June 30, 2022 | March 31, 2022 | December 31, 2021 |
|---|-------------------|--------------------|---------------|----------------|-------------------|
| Net Monthly Subscription Dollar Retention Rate  | >99%              | >99%               | >99%          | >99%           | >99%              |
| Annualized Exit Monthly Recurring Subscriptions | \$ 2,099.7        | \$ 2,046.9         | \$ 1,980.7    | \$ 1,894.8     | \$ 1,799.9        |



## Components of Results of Operations

### **Revenues**

Our revenues for the years presented consisted of subscriptions and other revenues. Our subscriptions revenue primarily includes recurring fixed plan subscription fees, variable usage-based fees for usage in excess of plan limits, one-time fees, recurring license and other fees, derived from sales through our direct and indirect sales channels, including resellers and distributors, strategic partners and global service providers. We provide our subscriptions to our customers pursuant to contractual arrangements that range in duration typically from one month to five years. We provide our subscriptions to our customers pursuant to either “click through” online agreements for service terms up to one year or written agreements when the arrangement is expected to be one year or longer. We offer our subscriptions based on the functionalities and services selected by a customer, and generally our subscription arrangements automatically renew for additional periods at the end of the initial subscription term. We believe that this flexibility in contract duration is important to meet the different needs of our customers.

We generally bill our subscription fees in advance. We recognize subscription revenue over the term of the agreement. Amounts billed in excess of revenue recognized for the period are reported as deferred revenue on our Consolidated Balance Sheets.

We also generate revenues through sales of our subscriptions and products by resellers, strategic partners, and global service providers. When we control the performance of the contractual obligations, we record the revenues on a gross basis and amounts retained by our resellers are recorded as sales and marketing expense. Our assumption of such control is evidenced when, among other things, we are primarily responsible for the delivery of the service or products, have inventory risk, and have discretion in establishing pricing of the arrangement.

“Other revenues” includes product revenues from the sale of pre-configured phones, and professional services. Product revenue is recognized when the product has been delivered to the customer. Professional services revenue is recognized as and when services are delivered.

### **Cost of Revenues and Gross Margin**

Our cost of subscriptions revenue primarily consists of fees paid to third-party telecommunications providers, network operations, costs to build out and maintain data centers, including co-location fees for the right to place our servers in data centers owned by third parties, depreciation of servers and equipment, along with related utilities and maintenance costs, amortization of acquired technology related intangible assets, personnel costs associated with customer care and support of the functionality of our platform and data center operations, including share-based compensation expenses, and allocated costs of facilities and information technology.

We define subscriptions gross margins as subscriptions revenue minus the cost of subscriptions revenue expressed as a percentage of subscriptions revenue.

Cost of other revenue is comprised primarily of the cost associated with the purchase of phones, personnel costs for employees and contractors, including share-based compensation expenses, cost of professional services, and allocated costs of facilities and information technology.

### **Operating Expenses**

We classify our operating expenses as research and development, sales and marketing, general and administrative expenses, and asset write-down charges.

Our research and development efforts are focused on developing new and expanded features for our solutions, integrations with distributors and other software platforms, and improvements to our backend architecture. Research and development expenses consist primarily of personnel costs for employees and contractors, including share-based compensation expenses, and allocated costs of facilities and information technology, software tools, product certification, and the impact of the “reductions in force” (“RIF”) undertaken in 2022. We expense research and development costs as incurred, except for certain internal-use software development costs that we capitalize. We believe that continued investment in our products is important for our future growth, and we expect our research and development expenses to continue to increase in absolute dollars for the foreseeable future, although these expenses may fluctuate as a percentage of our total revenues from period to period depending on the timing of these expenses.

Sales and marketing expenses are the largest component of our operating expenses and consist primarily of personnel costs for employees and contractors directly associated with our sales and marketing activities including share-based compensation expenses, internet advertising fees, television, radio and billboard advertising, public relations, commissions paid to employees, resellers and other third parties, amortization of capitalized sales commissions, trade shows, travel expenses, credit card fees, marketing and promotional activities, amortization of acquired customer relationship intangibles, allocated costs of facilities and information technology, and the impact of the RIF undertaken in 2022. We expect our sales and marketing expenses to continue to increase in absolute dollars for the foreseeable future as we expand our sales and marketing efforts domestically and internationally and continue to build our brand, although these expenses may fluctuate as a percentage of our total revenues from period to period depending on the timing of these expenses.

General and administrative expenses consist primarily of personnel costs, including share-based compensation expenses, for employees and contractors engaged in infrastructure and administrative activities to support the day-to-day operations of our business. Other significant components of general and administrative expenses include professional service fees, allocated costs of facilities and information technology, cost of compliance with certain government-imposed taxes, the costs of legal matters, business acquisition costs, loss contingencies, and the impact of the RIF undertaken in 2022. We expect our general and administrative expenses to continue to increase in absolute dollars for the foreseeable future, although these expenses may fluctuate as a percentage of our total revenues from period to period, depending on the timing of these expenses.

Asset write-down charges consist of write-offs related to our assets, including deferred and prepaid sales commission and acquired intangibles balances, whenever events or changes in circumstances have occurred that could indicate the carrying amount of such assets may not be recoverable.

**Other Income (Expense), Net**

Interest expenses consist primarily of amortization of the debt discount and issuance costs in connection with our convertible senior notes.

Other income (expenses) consist primarily of the following items:

- unrealized gains and losses from fair value adjustments on our long-term investments
- the realized impact on foreign exchange resulting from the settlement of our foreign currency assets and liabilities as well as unrealized impact on foreign exchange resulting from remeasurement of transactions and monetary assets and liabilities denominated in non-functional currencies; and
- interest income from our investments.

**Results of Operations**

The following tables set forth selected consolidated statements of operations data and such data as a percentage of total revenues. The historical results presented below are not necessarily indicative of the results that may be expected for any future period (in thousands):

|                                    | Year ended December 31, |                     |                    |
|------------------------------------|-------------------------|---------------------|--------------------|
|                                    | 2022                    | 2021                | 2020               |
| <b>Revenues</b>                    |                         |                     |                    |
| Subscriptions                      | \$ 1,887,756            | \$ 1,482,080        | \$ 1,086,276       |
| Other                              | 100,574                 | 112,674             | 97,381             |
| Total revenues                     | <u>1,988,330</u>        | <u>1,594,754</u>    | <u>1,183,657</u>   |
| <b>Cost of revenues</b>            |                         |                     |                    |
| Subscriptions                      | 531,098                 | 345,948             | 236,990            |
| Other                              | 110,633                 | 102,421             | 86,617             |
| Total cost of revenues             | <u>641,731</u>          | <u>448,369</u>      | <u>323,607</u>     |
| Gross profit                       | 1,346,599               | 1,146,385           | 860,050            |
| <b>Operating expenses</b>          |                         |                     |                    |
| Research and development           | 362,256                 | 309,739             | 189,484            |
| Sales and marketing                | 1,057,231               | 854,156             | 583,773            |
| General and administrative         | 292,898                 | 284,276             | 200,032            |
| Asset write-down charges           | 283,689                 | —                   | —                  |
| Total operating expenses           | <u>1,996,074</u>        | <u>1,448,171</u>    | <u>973,289</u>     |
| Loss from operations               | (649,475)               | (301,786)           | (113,239)          |
| <b>Other income (expense), net</b> |                         |                     |                    |
| Interest expense                   | (4,807)                 | (64,382)            | (49,281)           |
| Other income (expense)             | (219,771)               | (7,554)             | 80,458             |
| Other income (expense), net        | <u>(224,578)</u>        | <u>(71,936)</u>     | <u>31,177</u>      |
| Loss before income taxes           | (874,053)               | (373,722)           | (82,062)           |
| Provision for income taxes         | 5,113                   | 2,528               | 934                |
| <b>Net loss</b>                    | <u>\$ (879,166)</u>     | <u>\$ (376,250)</u> | <u>\$ (82,996)</u> |

**Percentage of Total Revenues\***

|                                    | Year ended December 31, |               |              |
|------------------------------------|-------------------------|---------------|--------------|
|                                    | 2022                    | 2021          | 2020         |
| <b>Revenues</b>                    |                         |               |              |
| Subscriptions                      | 95 %                    | 93 %          | 92 %         |
| Other                              | 5                       | 7             | 8            |
| <b>Total revenues</b>              | <b>100</b>              | <b>100</b>    | <b>100</b>   |
| <b>Cost of revenues</b>            |                         |               |              |
| Subscriptions                      | 27                      | 22            | 20           |
| Other                              | 6                       | 6             | 7            |
| <b>Total cost of revenues</b>      | <b>32</b>               | <b>28</b>     | <b>27</b>    |
| Gross profit                       | 68                      | 72            | 73           |
| <b>Operating expenses</b>          |                         |               |              |
| Research and development           | 18                      | 19            | 16           |
| Sales and marketing                | 53                      | 54            | 49           |
| General and administrative         | 15                      | 18            | 17           |
| Asset write-down charges           | 14                      | —             | —            |
| <b>Total operating expenses</b>    | <b>100</b>              | <b>91</b>     | <b>82</b>    |
| Loss from operations               | (33)                    | (19)          | (10)         |
| <b>Other income (expense), net</b> |                         |               |              |
| Interest expense                   | —                       | (4)           | (4)          |
| Other income (expense)             | (11)                    | 0             | 7            |
| <b>Other income (expense), net</b> | <b>(11)</b>             | <b>(5)</b>    | <b>3</b>     |
| Loss before income taxes           | (44)                    | (23)          | (7)          |
| Provision for income taxes         | —                       | —             | —            |
| <b>Net loss</b>                    | <b>(44 %)</b>           | <b>(24 %)</b> | <b>(7 %)</b> |

\* Percentages may not add up due to rounding.

**Comparison of Fiscal Years Ended December 31, 2022, 2021, and 2020:**
**Revenues**

| (in thousands, except percentages) | Year ended December 31, |                     |                   |             | Year ended December 31, |                     |                   |             |
|------------------------------------|-------------------------|---------------------|-------------------|-------------|-------------------------|---------------------|-------------------|-------------|
|                                    | 2022                    | 2021                | \$ Change         | % Change    | 2021                    | 2020                | \$ Change         | % Change    |
| <b>Revenues</b>                    |                         |                     |                   |             |                         |                     |                   |             |
| Subscriptions                      | \$ 1,887,756            | \$ 1,482,080        | \$ 405,676        | 27 %        | \$ 1,482,080            | \$ 1,086,276        | \$ 395,804        | 36 %        |
| Other                              | 100,574                 | 112,674             | (12,100)          | (11)%       | 112,674                 | 97,381              | 15,293            | 16 %        |
| <b>Total revenues</b>              | <b>\$ 1,988,330</b>     | <b>\$ 1,594,754</b> | <b>\$ 393,576</b> | <b>25 %</b> | <b>\$ 1,594,754</b>     | <b>\$ 1,183,657</b> | <b>\$ 411,097</b> | <b>35 %</b> |
| <b>Percentage of revenues</b>      |                         |                     |                   |             |                         |                     |                   |             |
| Subscriptions                      | 95 %                    | 93 %                |                   |             | 93 %                    | 92 %                |                   |             |
| Other                              | 5                       | 7                   |                   |             | 7                       | 8                   |                   |             |
| <b>Total</b>                       | <b>100 %</b>            | <b>100 %</b>        |                   |             | <b>100 %</b>            | <b>100 %</b>        |                   |             |

*Subscriptions revenue.* Subscriptions revenue increased by \$405.7 million, or 27%, during fiscal year 2022 as compared to fiscal year 2021. The increase was primarily a combination of the acquisition of new customers and upsells of seats and additional offerings to our existing customer base from our MVP and customer engagement solutions, and an increase in recurring license and other fees, derived from sales through our direct and indirect sales channels, including resellers and distributors, strategic partners and global service providers. This growth was primarily driven by an increase in sales to our

mid-market and enterprise customers as we continue to move up market. Although we expect to continue to add new customers and to increase the usage of our product for existing customers, we will monitor the impact of macroeconomic conditions, strengthening U.S. Dollar, and the effects of the COVID-19 pandemic. Subscriptions revenues included an adverse foreign currency impact of approximately 2% for the year ended December 31, 2022, compared to the respective prior year period. In addition, these macroeconomic factors could have an impact on customer buying behavior and demand, contract duration, churn, upsell and down-sell, payment terms, and credit card declines, all of which could cause variability in our revenue.

*Other revenues.* Other revenues are primarily comprised of product revenue from the sale of pre-configured phones and professional services.

Other revenues decreased by \$12.1 million, or 11%, during fiscal year 2022 as compared to fiscal year 2021, primarily due to the timing of revenue contracts for professional services compared to the prior year. Other revenues included an adverse foreign currency impact of approximately 1% for the year ended December 31, 2022 compared to the prior year. Due to evolving hybrid work environments, we continued to see a shift towards using RingCentral apps on laptops and mobile devices over traditional desktop phones which impacted the demand of phones and timing of professional services. We will continue to monitor the impact of the global economic conditions, and the effects of the COVID-19 pandemic on phone and professional services revenue.

### Cost of Revenues and Gross Margin

| (in thousands, except percentages) | Year ended December 31, |            |            |          | Year ended December 31, |            |            |          |
|------------------------------------|-------------------------|------------|------------|----------|-------------------------|------------|------------|----------|
|                                    | 2022                    | 2021       | \$ Change  | % Change | 2021                    | 2020       | \$ Change  | % Change |
| <b>Cost of revenues</b>            |                         |            |            |          |                         |            |            |          |
| Subscriptions                      | \$ 531,098              | \$ 345,948 | \$ 185,150 | 54 %     | \$ 345,948              | \$ 236,990 | \$ 108,958 | 46 %     |
| Other                              | 110,633                 | 102,421    | 8,212      | 8 %      | 102,421                 | 86,617     | 15,804     | 18 %     |
| Total cost of revenues             | \$ 641,731              | \$ 448,369 | \$ 193,362 | 43 %     | \$ 448,369              | \$ 323,607 | \$ 124,762 | 39 %     |
| <b>Percentage of revenues</b>      |                         |            |            |          |                         |            |            |          |
| Subscriptions                      | 27 %                    | 22 %       |            |          | 22 %                    | 20 %       |            |          |
| Other                              | 6 %                     | 6 %        |            |          | 6 %                     | 7 %        |            |          |
| <b>Gross margins</b>               |                         |            |            |          |                         |            |            |          |
| Subscriptions                      | 72 %                    | 77 %       |            |          | 77 %                    | 78 %       |            |          |
| Other                              | (10)%                   | 9 %        |            |          | 9 %                     | 11 %       |            |          |
| Total gross margin %               | 68 %                    | 72 %       |            |          | 72 %                    | 73 %       |            |          |

*Subscription cost of revenues and gross margin.* Cost of subscriptions revenues increased by \$185.2 million, or 54%, during fiscal year 2022 as compared to fiscal year 2021. The higher cost of subscription revenues and lower gross margin were due to incremental amortization of \$108.2 million primarily from intangible assets we acquired in the fourth quarter of 2021, third-party costs of \$31.8 million to support our solution offerings, infrastructure support costs of \$29.2 million, personnel and contractor-related costs of \$14.2 million, and professional fees of \$1.4 million. Personnel and contractor related costs includes share-based compensation expense of \$4.6 million.

The increase in expenses was driven by amortization of intangible assets we acquired in prior year, investments in our infrastructure and capacity to improve the availability of our subscription offerings, while also supporting the growth of new customers and increased usage of our subscriptions by our existing customer base.

*Other cost of revenues and gross margin.* Cost of other revenues increased by \$8.2 million, or 8%, during fiscal year 2022 as compared to fiscal year 2021. The higher cost of other revenues and lower gross margin were primarily due to the increase in professional fees of \$5.9 million and personnel costs of \$5.0 million, partially offset by a decrease in hardware costs of \$3.4 million.

### Research and Development

| (in thousands, except percentages) | Year ended December 31, |            |           |          | Year ended December 31, |            |            |          |
|------------------------------------|-------------------------|------------|-----------|----------|-------------------------|------------|------------|----------|
|                                    | 2022                    | 2021       | \$ Change | % Change | 2021                    | 2020       | \$ Change  | % Change |
| Research and development           | \$ 362,256              | \$ 309,739 | \$ 52,517 | 17 %     | \$ 309,739              | \$ 189,484 | \$ 120,255 | 63 %     |
| Percentage of total revenues       | 18 %                    | 19 %       |           |          | 19 %                    | 16 %       |            |          |

Research and development expenses increased by \$52.5 million, or 17%, during fiscal year 2022 as compared to fiscal year 2021, primarily driven by an increase in personnel and contractor costs of \$50.2 million, and \$6.8 million in overhead costs to support our research and development efforts, partially offset by a \$5.2 million reduction in professional fees. The increase in personnel and contractor costs was mainly driven by \$18.5 million in incremental expenses associated with relocation of our third-party contractors as a result of the Russia-Ukraine conflict, \$13.3 million related to headcount growth, \$7.4 million related to contractor-related costs, \$5.8 million related to share-based compensation expense primarily driven by equity awards granted to new and existing employees, and \$5.3 million was due to restructuring costs.

The increases in research and development headcount and other expense categories were driven by continued investment in current and future software development projects for our applications. Given the continued emphasis and focus on product innovation, we expect research and development expenses to continue to increase in absolute dollars.

### Sales and Marketing

| (in thousands, except percentages) | Year ended December 31, |            |            |          | Year ended December 31, |            |            |          |
|------------------------------------|-------------------------|------------|------------|----------|-------------------------|------------|------------|----------|
|                                    | 2022                    | 2021       | \$ Change  | % Change | 2021                    | 2020       | \$ Change  | % Change |
| Sales and marketing                | \$ 1,057,231            | \$ 854,156 | \$ 203,075 | 24 %     | \$ 854,156              | \$ 583,773 | \$ 270,383 | 46 %     |
| Percentage of total revenues       | 53 %                    | 54 %       |            |          | 54 %                    | 49 %       |            |          |

Sales and marketing expenses increased by \$203.1 million, or 24%, during fiscal year 2022 as compared to fiscal year 2021, primarily due to increases in third-party commissions of \$64.0 million, personnel and contractor costs of \$50.9 million, amortization of deferred sales commission costs of \$42.4 million, advertising, marketing and related travel costs of \$42.2 million, and overhead costs of \$4.5 million. Of the total increase in personnel and contractor costs, \$18.0 million was attributable to headcount growth, \$14.0 million was due to higher share-based compensation expense primarily driven by equity awards granted to new and existing employees, \$9.7 million was driven by restructuring costs, and \$4.3 million due to contractor-related costs.

The increases in sales and marketing headcount and other expense categories were necessary to support our growth strategy to acquire new customers with a focus on larger customers, and to establish brand recognition to achieve greater penetration into the North America and international markets. Additionally, we expect sales and marketing expenses to continue to increase in absolute dollars as we continue to expand our presence in North America and international markets.

### General and Administrative

| (in thousands, except percentages) | Year ended December 31, |            |           |          | Year ended December 31, |            |           |          |
|------------------------------------|-------------------------|------------|-----------|----------|-------------------------|------------|-----------|----------|
|                                    | 2022                    | 2021       | \$ Change | % Change | 2021                    | 2020       | \$ Change | % Change |
| General and administrative         | \$ 292,898              | \$ 284,276 | \$ 8,622  | 3 %      | \$ 284,276              | \$ 200,032 | \$ 84,244 | 42 %     |
| Percentage of total revenues       | 15 %                    | 18 %       |           |          | 18 %                    | 17 %       |           |          |

General and administrative expenses increased by \$8.6 million, or 3%, during fiscal year 2022 as compared to fiscal year 2021, primarily due to increases in personnel and contractor costs of \$7.9 million, business fees and taxes of \$3.6 million, and overhead costs of \$1.6 million, partially offset by a \$4.4 million reduction in professional fees. Of the total increase in personnel and contractor costs, \$3.3 million was mainly due to higher share-based compensation expense primarily driven by equity awards granted to new and existing employees, and \$2.7 million was due to restructuring costs.

We expect general and administrative expenses to continue to increase in absolute dollars as we continue to make additional investments in processes, systems, and personnel to support our anticipated revenue growth.

### Asset Write-Down Charges

| (in thousands, except percentages) | Year ended December 31, |      |            |          | Year ended December 31, |      |           |          |
|------------------------------------|-------------------------|------|------------|----------|-------------------------|------|-----------|----------|
|                                    | 2022                    | 2021 | \$ Change  | % Change | 2021                    | 2020 | \$ Change | % Change |
| Asset write-down charges           | \$ 283,689              | \$ — | \$ 283,689 | nm       | \$ —                    | \$ — | \$ —      | nm       |
| Percentage of total revenues       | 14 %                    | — %  |            |          | — %                     | — %  |           |          |

nm - not meaningful

Asset write-down charges increased by \$283.7 million during fiscal year 2022 as compared to fiscal year 2021, primarily due to the non-cash write-down of our prepaid sales commission balances in the second half of 2022 in connection with our strategic partnerships for Avaya. Refer to Note 5 – *Strategic Partnerships and Asset Acquisitions* the accompanying notes to the consolidated financial statements included in Part II, Item 8, “Consolidated Financial Statements and Supplementary Data” of this Annual Report on Form 10-K for further information regarding our assessment of our deferred and prepaid sales commission balances with our strategic partners.

### Other Income (Expense), Net

| (in thousands, except percentages) | Year ended December 31, |             |              |          | Year ended December 31, |             |              |          |
|------------------------------------|-------------------------|-------------|--------------|----------|-------------------------|-------------|--------------|----------|
|                                    | 2022                    | 2021        | \$ Change    | % Change | 2021                    | 2020        | \$ Change    | % Change |
| Interest expense                   | \$ (4,807)              | \$ (64,382) | \$ 59,575    | nm       | \$ (64,382)             | \$ (49,281) | \$ (15,101)  | nm       |
| Other income (expense)             | (219,771)               | (7,554)     | (212,217)    | nm       | (7,554)                 | 80,458      | (88,012)     | nm       |
| Other income (expense), net        | \$ (224,578)            | \$ (71,936) | \$ (152,642) | nm       | \$ (71,936)             | \$ 31,177   | \$ (103,113) | nm       |

nm - not meaningful

Other expense, net, increased by \$152.6 million during fiscal year 2022 as compared to fiscal year 2021, primarily due to incremental net unrealized losses of \$188.1 million recognized from our long-term investments, and a write-down charge of \$21.7 million related to accrued interest on our prepaid sales commission balance, partially offset by a \$59.6 million reduction in non-cash interest expense from the amortization of the debt discount and issuances costs related to our 2025 and 2026 Notes as a result of adopting ASU No. 2020-06 in the first quarter of 2022. The net unrealized losses on our long-term investments were \$202.3 million for the year ended December 31, 2022, compared to a loss of \$14.2 million recognized in the respective prior year period.

We expect interest income to further fluctuate in the future due to interest rate volatility in the current macroeconomic environment and reduction of our investments in money market funds.

### Net Loss

Net loss increased by \$502.9 million during fiscal year 2022 as compared to fiscal year 2021, mainly due to non-cash items including \$305.4 million related to asset write-down charges on our prepaid sales commission balance, a \$188.1 million increase of unrealized net losses recognized from our long-term investments, and \$108.2 million of incremental amortization from certain intangible assets we acquired in the prior year, partially offset by a \$59.6 million reduction in non-cash interest expense from the amortization of the debt discount and issuances costs related to our 2025 and 2026 Notes as a result of our adoption of ASU No. 2020-06.

## Liquidity and Capital Resources

Liquidity is a measure of our ability to access sufficient cash flows to meet the short-term and long-term cash requirements of our business operations.

We finance our operations primarily through sales to our customers, which could be billed either monthly or annually one year in advance. For customers with annual or multi-year contracts and those who opt for annual invoicing, we generally invoice only one annual period in advance and revenue is deferred for such advanced billings. We also finance our operations from proceeds from issuance of convertible senior notes, proceeds from issuance of convertible preferred stock, and proceeds from issuance of stock under our stock plans.

As of December 31, 2022 and 2021, we had cash and cash equivalents of \$270.0 million and \$267.2 million, respectively. For the year ended December 31, 2022 our cash flows reflected the following:

In December 2021, our board of directors authorized a share repurchase program to repurchase up to \$100 million of our outstanding shares of Class A Common Stock. During the year ended December 31, 2022, we repurchased and subsequently retired 2,297,330 shares of our Class A Common Stock for an aggregate amount of approximately \$100 million. We completed our share repurchase program on December 31, 2022.

We believe that our operations, existing liquidity sources as well as capital resources and ability to raise cash through additional financing will satisfy our future cash requirements and obligations for at least the next 12 months. Our future capital requirements will depend on many factors, including revenue growth and costs incurred to support customer growth, acquisitions and expansions, sales and marketing, research and development, increased general and administrative expenses to support the anticipated growth in our operations, and capital equipment required to support our headcount and in support of our co-location data center facilities, repurchase, repayment or otherwise settlement of a portion of our 2025 Notes and/or the 2026 Notes, as well as the impact of the global macroeconomic conditions. Our capital expenditures in future periods are expected to grow in line with our business. We continually evaluate our capital needs and may decide to raise additional capital to fund the growth of our business for general corporate purposes through public or private equity offerings or through additional debt financing. In the future, we may also make investments in or acquire businesses or technologies that could require us to seek additional equity or debt financing. Access to additional capital may not be available or on favorable terms. The uncertainty created by the global economic conditions, including concerns about rising inflation and an associated economic downturn, and the effects of the COVID-19 pandemic may also impact our customers' ability to pay on a timely basis, which could negatively impact our operating cash flows.

### *Subsequent Events*

#### *Share Repurchase Program*

On February 13, 2023, our board of directors authorized a share repurchase program under which we may repurchase up to \$175 million of our outstanding shares of Class A Common Stock. Under the program, share repurchases may be made at our discretion from time to time in open market transactions, privately negotiated transactions, or other means, subject to us maintaining a minimum cash balance. The program does not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares of our Class A Common Stock. The timing and number of any shares repurchased under the program will depend on a variety of factors, including stock price, trading volume, and general business and market conditions. The authorization is effective until December 31, 2023.

#### *Credit Agreement*

On February 14, 2023, we entered into a Credit Agreement (the "Credit Agreement"), among the Company, the lenders from time to time party thereto and Bank of America, N.A., as administrative agent and as collateral agent. The Credit Agreement provides for a \$200.0 million revolving loan facility, with a \$25.0 million sublimit for the issuance of letters of credit, and a \$400.0 million delayed draw term loan facility. The obligations under the Credit Agreement and the other loan documents are guaranteed by certain of our material domestic subsidiaries, and secured by substantially all of our personal property and that of such subsidiary guarantors. As of the date of this filing, no loans or letters of credit were outstanding under the Credit Agreement. Refer to Note 16 – *Subsequent Events* of the notes to the consolidated financial statements included in Part II, Item 8, "Consolidated Financial Statements and Supplementary Data" in this Annual Report on Form 10-K for additional information.



The proceeds of the loans under the Revolving Facility may be used for working capital and general corporate purposes. To the extent drawn, the proceeds of the loans under the Term Facility must be used to repurchase, repay, acquire or otherwise settle a portion of the 2025 Notes and/or the 2026 Notes.

### **Cash Flows**

The table below provides selected cash flow information for the periods indicated (in thousands):

|  | Year ended December 31, |              |             |
|--|-------------------------|--------------|-------------|
|  | 2022                    | 2021         | 2020        |
| Net cash provided by (used in) operating activities  | \$ 191,305              | \$ 152,151   | \$ (35,191) |
| Net cash used in investing activities                | (87,210)                | (396,829)    | (107,686)   |
| Net cash provided by (used in) financing activities  | (98,218)                | (127,051)    | 437,590     |
| Effect of exchange rate changes                      | (3,055)                 | (962)        | 1,534       |
| Net increase (decrease) in cash and cash equivalents | \$ 2,822                | \$ (372,691) | \$ 296,247  |

### **Net Cash Provided by Operating Activities**

Cash used in or provided by operating activities is driven by the timing of customer collections, as well as the amount and timing of disbursements to our vendors, the amount of cash we invest in personnel, marketing, and infrastructure costs to support the anticipated growth of our business, and payments under strategic arrangements.

Net cash provided by operating activities was \$191.3 million for the year ended December 31, 2022. The cash flow from operating activities was driven by timing of cash receipts from customers and global service providers, primarily offset by cash payments for personnel related costs and to vendors.

Net cash provided by operating activities for the year ended December 31, 2022, increased by \$39.2 million as compared to the year ended December 31, 2021. This change reflects working capital impacts resulting from the timing of payments and collections.

### **Net Cash Used In Investing Activities**

Our primary investing activities have consisted of our capital expenditures and expenditures for internal-use software, intellectual property assets, and long-term investments, partially offset by proceeds from sales of our marketable equity investments. As our business grows, we expect our capital expenditures to continue to increase.

Net cash used in investing activities was \$87.2 million for the year ended December 31, 2022, primarily due to capital expenditures including personnel-related costs associated with development of internal-use software of \$86.4 million, our acquisition of intellectual property of \$4.0 million to complement and support our product development and enhancement initiatives, partially offset by proceeds from the sales of our marketable equity investments of \$3.2 million.

Net cash used in investing activities for the year ended December 31, 2022 decreased by \$309.6 million as compared to the year ended December 31, 2021. The decrease was primarily due to lower payments of \$320.2 million due to our acquisitions of intellectual property and investments in 2021, partially offset by higher payments of \$13.8 million related to capital expenditures and internal-use software development.

### **Net Cash Used In Financing Activities**

Our primary financing activities have consisted of the issuance of stock under our stock plans, offset by payments toward the repurchase of our Class A Common Stock and our current financing obligations.

Net cash used in financing activities was \$98.2 million for the year ended December 31, 2022, primarily due to payments of \$99.8 million to repurchase and retire 2,297,330 shares of our Class A Common Stock pursuant to our share repurchase program, \$7.6 million for net taxes paid in connection with our stock plans, and \$4.8 million in payments toward our current financing obligations, partially offset by \$15.9 million in proceeds from issuance of stock in connection with our stock plans.

Net cash used in financing activities for the year ended December 31, 2022, decreased by \$28.8 million as compared to the year ended December 31, 2021. This decrease was primarily due to lower repayments of \$333.6 million from conversion requests and the redemption of our 2023 Notes, partially offset by lower proceeds of \$199.4 million from the issuance of our Series A Convertible Preferred Stock, and higher payments of \$99.8 million to repurchase and retire 2,297,330 shares of our Class A Common Stock pursuant to our share repurchase program.

### **Non-GAAP Free Cash Flow**

To supplement our statements of cash flows presented on a GAAP basis, we use non-GAAP measures of cash flows to analyze cash flow generated from our operations. We define free cash flow, a non-GAAP financial measure, as GAAP net cash provided by (used in) operating activities plus (subtract) cash paid (received) for strategic partnerships and repayments of convertible notes attributable to debt discount, reduced by purchases of property and equipment and capitalized internal-use software. We believe information regarding free cash flow provides useful information to management and investors in understanding the strength of liquidity and available cash. A limitation of the use of free cash flow is that it does not represent the total increase or decrease in our cash balance for the period. Free cash flow should not be considered in isolation or as an alternative to cash flows from operations, and should be considered alongside our other GAAP-based financial liquidity performance measures, such as net cash provided by (used in) operating activities and our other GAAP financial results.

The following table presents a reconciliation of free cash flow to net cash provided by (used in) operating activities, the most directly comparable GAAP measure, for each of the periods presented (in thousands):

|   | Year Ended<br>December 31, |            |             |
|---|----------------------------|------------|-------------|
|   | 2022                       | 2021       | 2020        |
| Net cash provided by (used in) operating activities                 | \$ 191,305                 | \$ 152,151 | \$ (35,191) |
| Strategic partnerships  | (30,000)                   | —          | 141,584     |
| Repayment of convertible senior notes attributable to debt discount | —                          | 10,131     | 35,020      |
| Non-GAAP net cash provided by operating activities                  | 161,305                    | 162,282    | 141,413     |
| Purchases of property and equipment                                 | (32,713)                   | (28,959)   | (43,618)    |
| Capitalized internal-use software                                   | (53,730)                   | (43,692)   | (38,113)    |
| Non-GAAP free cash flow   | \$ 74,862                  | \$ 89,631  | \$ 59,682   |

### **Backlog**

We have generally signed new customers contracts with varying length, from month-to-month to multi-year terms for our subscription services. At any point in the contract term, there can be amounts allocated to services that we have not yet contractually performed, which constitute a backlog. Until we meet our performance obligations, we do not recognize them as revenues in our consolidated financial statements. Given the variability in our contract length, we believe that backlog is not a reliable indicator of future revenues and we do not utilize backlog as a key management metric internally.

### **Deferred Revenue**

Deferred revenue primarily consists of the unearned portion of monthly or annual invoiced fees for our subscriptions, which we recognize as revenue in accordance with our revenue recognition policy. For customers with multi-year contracts, we generally invoice for only one monthly or annual subscription period in advance. Therefore, our deferred revenue balance does not capture the full contract value of multi-year contracts. Accordingly, we believe that deferred revenue is not a reliable indicator of future revenues and we do not utilize deferred revenue as a key management metric internally.

**Contractual Obligations**

The following summarizes our contractual obligations as of December 31, 2022 (in thousands):

|                             | Payments due by period |              |              |                      | Total        |
|-----------------------------|------------------------|--------------|--------------|----------------------|--------------|
|                             | Up to<br>1 year        | 1 to 3 years | 3 to 5 years | More than<br>5 years |              |
| Operating lease obligations | \$ 18,984              | \$ 14,505    | \$ 5,361     | \$ 2,078             | \$ 40,928    |
| Financing obligations       | 4,972                  | 1,791        | —            | —                    | 6,763        |
| Long-term debt              | —                      | 1,000,000    | 650,000      | —                    | 1,650,000    |
| Purchase obligations        | 77,201                 | 75,981       | 53,131       | 32,160               | 238,473      |
| Total                       | \$ 101,157             | \$ 1,092,277 | \$ 708,492   | \$ 34,238            | \$ 1,936,164 |

Purchase obligations represent an estimate of open purchase orders and contractual obligations in the normal course of business for which we have not received the goods or services as of December 31, 2022. Although open purchase orders are considered enforceable and legally binding, except for our purchase orders with our inventory suppliers, the terms generally allow us the option to cancel, reschedule, and adjust our requirements based on our business needs prior to the delivery of goods or performance of services. Our purchase orders with our inventory suppliers are non-cancellable. In addition, we have other obligations for goods and services that we enter into in the normal course of business. These obligations, however, are either not enforceable or legally binding, or are subject to change based on our business decisions. The aggregate of these items represents our estimate of purchase obligations.

**Indemnification Obligations**

Certain of our agreements with sales agents, resellers and customers include provisions for indemnification against liabilities if our products infringe a third-party's intellectual property rights. To date, we have not incurred any material costs as a result of such indemnification provisions and have not accrued any liabilities related to such obligations in the consolidated financial statements as of December 31, 2022.

**Contingencies**

We are and may be in the future subject to certain legal proceedings and from time to time may be involved in a variety of claims, lawsuits, investigations, and proceedings relating to contractual disputes, intellectual property rights, employment matters, regulatory compliance matters, and other matters relating to various claims that arise in the normal course of business. We record a provision for a liability when we believe that it is both probable that a liability has been incurred, and the amount can be reasonably estimated. Significant judgment is required to determine both probability and the estimated amount of loss. Such legal proceedings are inherently unpredictable and subject to significant uncertainties, some of which are beyond our control. Should any of these estimates and assumptions change or prove to be incorrect, it could have a significant impact on our results of operations, financial position, and cash flows.

Refer to Note 8 – *Commitments and Contingencies* of the notes to the consolidated financial statements included in Part II, Item 8, “Consolidated Financial Statements and Supplementary Data” in this Annual Report on Form 10-K for additional information.

**Critical Accounting Policies and Estimates**

We prepare our consolidated financial statements in accordance with U.S. GAAP. In many cases, the accounting treatment of a particular transaction is specifically dictated by U.S. GAAP and does not require management's judgment in its application. In other cases, management's judgment is required in selecting among available alternative accounting standards that provide for different accounting treatment for similar transactions. The preparation of consolidated financial statements also requires us to make estimates and assumptions that affect the amounts we report as assets, liabilities, revenues, costs, and expenses, and affect the related disclosures. We base our estimates on historical experience and other assumptions that we believe are reasonable under the circumstances. In many instances, we could reasonably use different accounting estimates, and in some instances changes in the accounting estimates are reasonably likely to occur from period to period. Accordingly, our actual results could differ significantly from the estimates made by our management. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations, and cash flows will be affected. A summary of our significant accounting policies is included in Note 1 of the notes to the

consolidated financial statements included in Part II, Item 8, which is incorporated herein by reference. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

***Revenue Recognition***

We derive our revenues from subscriptions, sale of products, and professional services. Subscriptions revenue is generally recognized over the period of the subscription contract. Subscription contracts generally allow the customers to terminate their services at any time during the first 30 to 60 days of the subscription period and are charged for the term of usage. Upon cancellation during the termination period, customers receive a pro-rata refund for any amounts paid. After the end of the termination period, the contract is non-cancellable and the customer is obligated to pay for the remaining term of the contract. For sale of products, revenue is recognized when control is transferred. For professional services, revenue is recognized as and when services are rendered.

***Deferred and Prepaid Sales Commission***

We capitalize sales commission expenses and associated payroll taxes paid to internal sales personnel and resellers, who sell our offerings. The resellers are selling agents for us and earn sales commissions which are directly tied to the value of the contracts that we enter with the end-user customers. These sales commissions are incremental costs we incur to obtain contracts with its end-user customers. We pay sales commissions on initial contracts and contracts for increased purchases with existing customers (expansion contracts). We generally do not pay sales commissions for contract renewals. These sales commission costs are deferred and then amortized over the expected period of benefit, which is estimated to be five years. We have determined the period of benefit taking into consideration the expected subscription term and expected renewal periods of its customer contracts, the duration of its relationships with its customers considering historical and expected customer retention, technology and other factors.

We estimate the recoverability of our deferred and prepaid and sales commissions balance whenever events or changes in circumstances have occurred that could indicate the carrying amount of such assets may not be recoverable. We have used various valuation techniques to determine the fair-values of our deferred and prepaid sales commission to measure and allocate an asset write-down charge. Determining valuations using these valuation techniques requires significant judgment and assumptions by management. Different judgments could yield different results.

***Recent Accounting Pronouncements***

For a summary of recent accounting pronouncements and the anticipated effects on our consolidated financial statements, see Note 1 to the consolidated financial statements included in Part II, Item 8, "Consolidated Financial Statements and Supplementary Data" in this Annual Report on Form 10-K, which is incorporated herein by reference.

## **ITEM 7A. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to market risk in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in foreign currency exchange rates and interest rates. We do not hold or issue financial instruments for trading purposes.

### ***Foreign Currency Risk***

The majority of our sales and contracts are denominated in U.S. dollars, and therefore our net revenue is not currently subject to significant foreign currency risk. As part of our international operations, we charge customers in British Pounds, European Union (“EU”) Euro, Canadian Dollars and Australian Dollars, among others. Fluctuations in foreign currency exchange rates and volatility in the market due to global economic conditions could cause variability in our subscriptions revenues, total revenues, annualized exit monthly recurring subscriptions revenues and operating results. Our operating expenses are generally denominated in the currencies of the countries in which our operations are located, which are primarily in the U.S., and to a lesser extent in Canada, Europe, and Asia-Pacific. The functional currency of our foreign subsidiaries is generally the local currency. Our consolidated results of operations and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates and may be adversely affected in the future due to changes in foreign currency exchange rates. To date, we have not entered into any hedging arrangements with respect to foreign currency risk. During fiscal 2022, a hypothetical 10% change in foreign currency exchange rates applicable to our business would not have had a material impact on our consolidated financial statements. As our international operations continue to expand, risks associated with fluctuating foreign currency rates may increase. We will continue to reassess our approach to managing these risks.

### ***Interest Rate Risk***

As of December 31, 2022, we had cash and cash equivalents of \$270.0 million. We invest our cash and cash equivalents in short-term money market funds. The carrying amount of our cash equivalents reasonably approximates fair values. Due to the short-term nature of our money-market funds, we believe that exposure to changes in interest rates will not have a material impact on the fair value of our cash equivalents. Interest income may further fluctuate in the future due to interest rate volatility in the current macroeconomic environment. During fiscal year 2022, a hypothetical 10% increase or decrease in overall interest rates would not have had a material impact on our interest income.

As of December 31, 2022, we had \$994.1 million and \$644.3 million outstanding from our 2025 Notes and 2026 Notes (collectively the “Notes”), respectively. We carry the Notes at face value less unamortized discount on our balance sheet, and we present the fair value for required disclosure purposes only. The Notes have a zero percent fixed annual interest rate and, therefore, we have no economic exposure to changes in interest rates. The fair value of the Notes is exposed to interest rate risk. Generally, the fair value of our fixed interest rate Notes will increase as interest rates decline and decrease as interest rates increase. In addition, the fair values of the Notes are affected by our stock price. The fair value of the Notes will generally increase as our common stock price increases and will generally decrease as our common stock price decrease in value.

### ***Market Risk***

As of December 31, 2022, we had long-term investments in convertible and redeemable preferred stock of \$1.6 million. These investments are subject to market related risks that could decrease or increase the fair value of our holdings. These investments are adjusted to fair value based on market inputs at the balance sheet date, which are subject to market-related risks that could decrease or increase the fair value of our holdings, including uncertainty created by the macroeconomic conditions. A change in the investee’s probability of default, recoverability of investment assumptions or a combination of both, could have an adverse impact on the fair value up to the full amount of our investment.

### ***Inflation Risk***

We do not believe that inflation has had a material effect on our business, financial condition, or results of operations. Nonetheless, if our costs in connection with the operation of our business were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.

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

**RINGCENTRAL, INC.  
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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors

RingCentral, Inc.:

### *Opinions on the Consolidated Financial Statements and Internal Control Over Financial Reporting*

We have audited the accompanying consolidated balance sheets of RingCentral, Inc. and subsidiaries (the Company) as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive loss, stockholders' (deficit) equity, and cash flows for each of the years in the three-year period ended December 31, 2022, and the related notes (collectively, the consolidated financial statements). We also have audited the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022 based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

### *Change in Accounting Principle*

As discussed in Note 1 to the consolidated financial statements, the Company changed its method of accounting for convertible debt as of January 1, 2022 due to the adoption of Financial Accounting Standards Board's Accounting Standards Update No. 2020-06.

### *Basis for Opinions*

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

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

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

### *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.

*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.

*Evaluation of the Sufficiency of Audit Evidence Over Subscriptions Revenue*

As discussed in Note 1 to the consolidated financial statements, and disclosed in the consolidated statements of operations, the Company recorded \$1,988.3 million of total revenues for the year ended December 31, 2022, of which \$1,887.8 million related to subscriptions. There are high volumes of subscription transactions processed across multiple information technology (IT) systems.

We identified the evaluation of the sufficiency of audit evidence over subscriptions revenue as a critical audit matter. This matter required especially subjective auditor judgment because of the number of IT applications involved in the subscriptions revenue recognition process. This matter also included determining the nature and extent of audit evidence obtained over subscriptions revenue, and the need to involve IT professionals to assist with the performance of certain procedures.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls over the Company's subscriptions revenue process, including associated IT controls. We applied auditor judgment to determine the nature and extent of procedures to be performed over subscriptions revenue, including the determination of the IT applications subject to testing. We assessed the recorded subscriptions revenue by selecting transactions and comparing the amounts recognized for consistency with underlying documentation, including contracts with customers. We also involved IT professionals with specialized skills and knowledge, who assisted in testing certain IT applications that are used by the Company in its subscriptions revenue recognition process. We evaluated the sufficiency of audit evidence obtained by assessing the results of procedures performed, including the appropriateness of such evidence.

/s/ KPMG LLP

We have served as the Company's auditor since 2010.

San Francisco, California  
February 22, 2023



**RINGCENTRAL, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except par value per share)

|  | <u>December 31,</u><br><u>2022</u> | <u>December 31,</u><br><u>2021</u> |
|--|------------------------------------|------------------------------------|
| <b>Assets</b>  |                                    |                                    |
| <b>Current assets</b>  |                                    |                                    |
| Cash and cash equivalents  | \$ 269,984                         | \$ 267,162                         |
| Accounts receivable, net   | 311,318                            | 232,842                            |
| Deferred and prepaid sales commission costs  | 158,865                            | 102,572                            |
| Prepaid expenses and other current assets  | 55,849                             | 48,165                             |
| <b>Total current assets</b>  | <u>796,016</u>                     | <u>650,741</u>                     |
| Property and equipment, net  | 185,400                            | 166,910                            |
| Operating lease right-of-use assets  | 35,433                             | 47,294                             |
| Long-term investments  | 4,559                              | 210,445                            |
| Deferred and prepaid sales commission costs, non-current   | 438,579                            | 723,448                            |
| Goodwill   | 54,335                             | 55,490                             |
| Acquired intangibles, net  | 528,051                            | 716,606                            |
| Other assets   | 31,289                             | 8,105                              |
| <b>Total assets</b>  | <u>\$ 2,073,662</u>                | <u>\$ 2,579,039</u>                |
| <b>Liabilities, Temporary Equity, and Stockholders' (Deficit) Equity</b>   |                                    |                                    |
| <b>Current liabilities</b>   |                                    |                                    |
| Accounts payable   | \$ 62,721                          | \$ 70,022                          |
| Accrued liabilities  | 380,113                            | 279,798                            |
| Deferred revenue   | 209,725                            | 176,450                            |
| <b>Total current liabilities</b>   | <u>652,559</u>                     | <u>526,270</u>                     |
| Convertible senior notes, net  | 1,638,411                          | 1,398,489                          |
| Operating lease liabilities  | 20,182                             | 31,812                             |
| Other long-term liabilities  | 45,848                             | 84,052                             |
| <b>Total liabilities</b>   | <u>2,357,000</u>                   | <u>2,040,623</u>                   |
| Commitments and contingencies (Note 8)   |                                    |                                    |
| Series A convertible preferred stock, \$0.0001 par value; 200 shares authorized at December 31, 2022 and 2021; 200 shares issued and outstanding at December 31, 2022 and 2021     | 199,449                            | 199,449                            |
| <b>Stockholders' (deficit) equity</b>  |                                    |                                    |
| Class A common stock, \$0.0001 par value; 1,000,000 shares authorized at December 31, 2022 and 2021; 85,461 and 84,335 shares issued and outstanding at December 31, 2022 and 2021 | 9                                  | 8                                  |
| Class B common stock, \$0.0001 par value; 250,000 shares authorized at December 31, 2022 and 2021; 9,924 and 9,974 shares issued and outstanding at December 31, 2022 and 2021     | 1                                  | 1                                  |
| Additional paid-in capital   | 1,059,880                          | 1,086,870                          |
| Accumulated other comprehensive (loss) income  | (8,781)                            | 644                                |
| Accumulated deficit  | (1,533,896)                        | (748,556)                          |
| <b>Total stockholders' (deficit) equity</b>  | <u>(482,787)</u>                   | <u>338,967</u>                     |
| <b>Total liabilities, temporary equity and stockholders' (deficit) equity</b>  | <u>\$ 2,073,662</u>                | <u>\$ 2,579,039</u>                |

See accompanying notes to consolidated financial statements

**RINGCENTRAL, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)

|  | Year ended December 31, |                     |                    |
|--|-------------------------|---------------------|--------------------|
|  | 2022                    | 2021                | 2020               |
| <b>Revenues</b>  |                         |                     |                    |
| Subscriptions  | \$ 1,887,756            | \$ 1,482,080        | \$ 1,086,276       |
| Other  | 100,574                 | 112,674             | 97,381             |
| Total revenues   | <u>1,988,330</u>        | <u>1,594,754</u>    | <u>1,183,657</u>   |
| <b>Cost of revenues</b>  |                         |                     |                    |
| Subscriptions  | 531,098                 | 345,948             | 236,990            |
| Other  | 110,633                 | 102,421             | 86,617             |
| Total cost of revenues   | <u>641,731</u>          | <u>448,369</u>      | <u>323,607</u>     |
| Gross profit   | 1,346,599               | 1,146,385           | 860,050            |
| <b>Operating expenses</b>  |                         |                     |                    |
| Research and development   | 362,256                 | 309,739             | 189,484            |
| Sales and marketing  | 1,057,231               | 854,156             | 583,773            |
| General and administrative   | 292,898                 | 284,276             | 200,032            |
| Asset write-down charges   | 283,689                 | —                   | —                  |
| Total operating expenses   | <u>1,996,074</u>        | <u>1,448,171</u>    | <u>973,289</u>     |
| Loss from operations   | (649,475)               | (301,786)           | (113,239)          |
| <b>Other income (expense), net</b>                                     |                         |                     |                    |
| Interest expense   | (4,807)                 | (64,382)            | (49,281)           |
| Other income (expense)   | (219,771)               | (7,554)             | 80,458             |
| Other income (expense), net  | <u>(224,578)</u>        | <u>(71,936)</u>     | <u>31,177</u>      |
| Loss before income taxes   | (874,053)               | (373,722)           | (82,062)           |
| Provision for income taxes   | 5,113                   | 2,528               | 934                |
| <b>Net loss</b>  | <u>\$ (879,166)</u>     | <u>\$ (376,250)</u> | <u>\$ (82,996)</u> |
| Net loss per common share  |                         |                     |                    |
| Basic and diluted  | <u>\$ (9.23)</u>        | <u>\$ (4.10)</u>    | <u>\$ (0.94)</u>   |
| Weighted-average number of shares used in computing net loss per share |                         |                     |                    |
| Basic and diluted  | <u>95,239</u>           | <u>91,738</u>       | <u>88,684</u>      |

See accompanying notes to consolidated financial statements

**RINGCENTRAL, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
**(in thousands)**

|   | <b>Year ended December 31,</b> |                     |                    |
|---|--------------------------------|---------------------|--------------------|
|   | <b>2022</b>                    | <b>2021</b>         | <b>2020</b>        |
| <b>Net loss</b>                               | \$ (879,166)                   | \$ (376,250)        | \$ (82,996)        |
| <b>Other comprehensive (loss) income</b>      |                                |                     |                    |
| Foreign currency translation adjustments, net | (9,425)                        | (6,162)             | 4,858              |
| <b>Comprehensive loss</b>                     | <u>\$ (888,591)</u>            | <u>\$ (382,412)</u> | <u>\$ (78,138)</u> |

See accompanying notes to consolidated financial statements

**RINGCENTRAL, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY**  
(in thousands)

|  | Common stock |        | Additional<br>Paid-in<br>Capital | Accumulated Other<br>Comprehensive<br>Income (Loss) | Accumulated<br>Deficit | Total<br>Stockholders'<br>(Deficit) Equity |
|--|--------------|--------|----------------------------------|---|------------------------|--|
|  | Shares       | Amount |                                  |   |                        |  |
| <b>Balance as of December 31, 2019</b>   | 86,940       | \$ 9   | \$ 1,033,053                     | \$ 1,948  | \$ (289,310)           | \$ 745,700                                 |
| Issuance of common stock in connection with Equity Incentive and Employee Stock Purchase plans, net of tax withholdings                                    | 3,149        | —      | 4,513                            | —   | —                      | 4,513                                      |
| Share-based compensation   | —            | —      | 194,667                          | —   | —                      | 194,667                                    |
| Equity component of convertible senior notes, net of issuance costs  | —            | —      | 329,280                          | —   | —                      | 329,280                                    |
| Purchase of capped calls related convertible senior notes  | —            | —      | (102,695)                        | —   | —                      | (102,695)                                  |
| Equity component from repurchase or redemption of convertible senior notes   | 341          | —      | (781,081)                        | —   | —                      | (781,081)                                  |
| Temporary equity reclassification, convertible senior notes  | —            | —      | (3,787)                          | —   | —                      | (3,787)                                    |
| Changes in comprehensive income  | —            | —      | —                                | 4,858   | —                      | 4,858                                      |
| Net loss   | —            | —      | —                                | —   | (82,996)               | (82,996)                                   |
| <b>Balance as of December 31, 2020</b>   | 90,430       | \$ 9   | \$ 673,950                       | \$ 6,806  | \$ (372,306)           | \$ 308,459                                 |
| Issuance of common stock in connection with Equity Incentive and Employee Stock Purchase plans, net of tax withholdings                                    | 2,598        | —      | 15,172                           | —   | —                      | 15,172                                     |
| Share-based compensation   | —            | —      | 364,135                          | —   | —                      | 364,135                                    |
| Issuance of common stock in connection with investments  | 1,281        | —      | 299,410                          | —   | —                      | 299,410                                    |
| Equity component from repurchase or redemption of convertible senior notes   | —            | —      | (269,584)                        | —   | —                      | (269,584)                                  |
| Temporary equity reclassification, convertible senior notes  | —            | —      | 3,787                            | —   | —                      | 3,787                                      |
| Changes in comprehensive income  | —            | —      | —                                | (6,162)   | —                      | (6,162)                                    |
| Net loss   | —            | —      | —                                | —   | (376,250)              | (376,250)                                  |
| <b>Balance as of December 31, 2021</b>   | 94,309       | \$ 9   | \$ 1,086,870                     | \$ 644  | \$ (748,556)           | \$ 338,967                                 |
| Cumulative effect of accounting change (Note 1)  | —            | —      | (329,280)                        | —   | 93,826                 | (235,454)                                  |
| Issuance of common stock in connection with Equity Incentive and Employee Stock Purchase plans, net of tax withholdings, and other commercial arrangements | 3,373        | 1      | 21,418                           | —   | —                      | 21,419                                     |
| Repurchases of common stock  | (2,297)      | —      | (99,793)                         | —   | —                      | (99,793)                                   |
| Share-based compensation   | —            | —      | 380,665                          | —   | —                      | 380,665                                    |
| Changes in comprehensive income  | —            | —      | —                                | (9,425)   | —                      | (9,425)                                    |
| Net loss   | —            | —      | —                                | —   | (879,166)              | (879,166)                                  |
| <b>Balance as of December 31, 2022</b>   | 95,385       | \$ 10  | \$ 1,059,880                     | \$ (8,781)  | \$ (1,533,896)         | \$ (482,787)                               |

See accompanying notes to consolidated financial statements

**RINGCENTRAL, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

|   | Year ended December 31, |                   |                   |
|---|-------------------------|-------------------|-------------------|
|   | 2022                    | 2021              | 2020              |
| <b>Cash flows from operating activities</b>   |                         |                   |                   |
| Net loss  | \$ (879,166)            | \$ (376,250)      | \$ (82,996)       |
| Adjustments to reconcile net loss to net cash (used in) provided by operating activities: |                         |                   |                   |
| Depreciation and amortization   | 246,561                 | 125,292           | 75,612            |
| Share-based compensation  | 386,009                 | 357,965           | 189,600           |
| Unrealized loss (gain) on investments   | 203,483                 | 14,611            | (80,988)          |
| Asset write-down and other charges  | 305,351                 | —                 | —                 |
| Amortization of deferred and prepaid sales commission costs                               | 115,184                 | 74,165            | 47,207            |
| Amortization of debt discount and issuance costs  | 4,468                   | 64,063            | 49,031            |
| Loss on early extinguishment of debt  | —                       | 1,736             | 13,284            |
| Repayment of convertible senior notes attributable to debt discount                       | —                       | (10,131)          | (35,020)          |
| Reduction of operating lease right-of-use assets  | 19,907                  | 18,025            | 15,712            |
| Provision for bad debt  | 9,367                   | 8,132             | 5,936             |
| Other   | 4,327                   | 809               | (2,941)           |
| Changes in assets and liabilities:  |                         |                   |                   |
| Accounts receivable   | (87,843)                | (64,940)          | (51,980)          |
| Deferred and prepaid sales commission costs   | (235,869)               | (178,358)         | (274,908)         |
| Prepaid expenses and other assets   | 3,812                   | 9,111             | (20,612)          |
| Accounts payable  | (6,166)                 | 17,852            | 21,916            |
| Accrued and other liabilities   | 89,473                  | 74,517            | 76,467            |
| Deferred revenue  | 33,275                  | 34,227            | 34,851            |
| Operating lease liabilities   | (20,868)                | (18,675)          | (15,362)          |
| Net cash provided by (used in) operating activities                                       | <u>191,305</u>          | <u>152,151</u>    | <u>(35,191)</u>   |
| <b>Cash flows from investing activities</b>   |                         |                   |                   |
| Purchases of property and equipment   | (32,713)                | (28,959)          | (43,618)          |
| Capitalized internal-use software   | (53,730)                | (43,692)          | (38,113)          |
| Purchases of intangible assets and long-term investments                                  | (3,990)                 | (324,178)         | (25,955)          |
| Proceeds from sale of marketable equity investments                                       | 3,223                   | —                 | —                 |
| Net cash used in investing activities   | <u>(87,210)</u>         | <u>(396,829)</u>  | <u>(107,686)</u>  |
| <b>Cash flows from financing activities</b>   |                         |                   |                   |
| Proceeds from issuance of convertible senior notes, net of issuance costs                 | —                       | —                 | 1,627,177         |
| Payments for repurchase or redemption of convertible senior notes                         | —                       | (333,632)         | (1,086,268)       |
| Payments for capped calls and transaction costs   | —                       | —                 | (102,695)         |
| Proceeds from series A convertible preferred stock, net of issuance costs                 | —                       | 199,449           | —                 |
| Payments for repurchase of common stock   | (99,793)                | —                 | —                 |
| Proceeds from issuance of stock in connection with stock plans                            | 15,855                  | 36,721            | 41,230            |
| Payments for taxes related to net share settlement of equity awards                       | (7,598)                 | (21,549)          | (36,717)          |
| Repayment of financing obligations  | (4,815)                 | (4,160)           | (1,489)           |
| Payment for contingent consideration  | (1,867)                 | (3,880)           | (3,648)           |
| Net cash provided by (used in) financing activities                                       | <u>(98,218)</u>         | <u>(127,051)</u>  | <u>437,590</u>    |
| Effect of exchange rate changes   | (3,055)                 | (962)             | 1,534             |
| Net increase (decrease) in cash, cash equivalents, and restricted cash                    | 2,822                   | (372,691)         | 296,247           |
| <b>Cash, cash equivalents, and restricted cash</b>  |                         |                   |                   |
| Beginning of year   | 267,162                 | 639,853           | 343,606           |
| End of year   | <u>\$ 269,984</u>       | <u>\$ 267,162</u> | <u>\$ 639,853</u> |
| <b>Supplemental disclosure of cash flow data:</b>   |                         |                   |                   |
| Cash paid for interest  | \$ 347                  | \$ 309            | \$ 220            |
| Cash paid for income taxes, net of refunds  | \$ 3,726                | \$ 1,388          | \$ 870            |
| <b>Non-cash investing and financing activities</b>  |                         |                   |                   |
| Common stock issued for acquisition of intangible assets                                  | \$ —                    | \$ 302,600        | \$ —              |
| Contingent consideration not paid   | \$ —                    | \$ 50,000         | \$ —              |
| Equipment and capitalized internal-use software purchased and unpaid at period end        | \$ 6,808                | \$ 7,343          | \$ 7,926          |
| Cash held for future indemnity claims and other potential future payments                 | \$ —                    | \$ —              | \$ 197            |
| Equipment acquired under financing obligations  | \$ —                    | \$ 6,898          | \$ 4,694          |

See accompanying notes to consolidated financial statements

**RINGCENTRAL, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Description of Business and Summary of Significant Accounting Policies**

***Description of Business***

RingCentral, Inc. (the “Company”) is a provider of software-as-a-service (“SaaS”) solutions that enables businesses to communicate, collaborate and connect. The Company was incorporated in California in 1999 and was reincorporated in Delaware on September 26, 2013.

***Principles of Consolidation***

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) and include the consolidated accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

***Use of Estimates***

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, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. The significant estimates made by management affect revenues, the allowance for doubtful accounts, valuation of long-term investments, deferred and prepaid sales commission costs, goodwill, useful lives of intangible assets, share-based compensation, capitalization of internally developed software, return reserves, provision for income taxes, uncertain tax positions, loss contingencies, sales tax liabilities and accrued liabilities. Management periodically evaluates these estimates and will make adjustments prospectively based upon the results of such periodic evaluations. Actual results may differ from these estimates.

***Foreign Currency***

The functional currency of the Company’s foreign subsidiaries is generally the local currency. Adjustments resulting from translating foreign functional currency financial statements into U.S. dollars are recorded as part of a separate component of stockholders’ equity and reported in the Consolidated Statements of Comprehensive Income (Loss). Foreign currency transaction gains and losses are included in net loss for the period. All assets and liabilities denominated in a foreign currency are translated into U.S. dollars at the exchange rate on the balance sheet date. Revenues and expenses are translated at the average exchange rate during the period. Equity transactions are translated using historical exchange rates.

***Cash and Cash Equivalents***

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. Cash and cash equivalents are stated at fair value.

***Allowance for Doubtful Accounts***

For the years ended December 31, 2022 and 2021, a portion of revenues were realized from credit card transactions while the remaining revenues generated accounts receivable. The Company determines provisions based on historical loss patterns, the number of days that billings are past due, and an evaluation of the potential risk of loss associated with delinquent accounts.

Below is a summary of the changes in allowance for doubtful accounts for the years ended December 31, 2022, 2021 and 2020 (in thousands):

|                                 | Balance at<br>beginning of<br>year | Provision,<br>net of<br>recoveries | Write-offs | Balance at<br>end of<br>year |
|---------------------------------|------------------------------------|------------------------------------|------------|------------------------------|
| Year ended December 31, 2022    |                                    |                                    |            |                              |
| Allowance for doubtful accounts | \$ 8,026                           | \$ 9,367                           | \$ 7,812   | \$ 9,581                     |
| Year ended December 31, 2021    |                                    |                                    |            |                              |
| Allowance for doubtful accounts | \$ 5,184                           | \$ 8,132                           | \$ 5,290   | \$ 8,026                     |
| Year ended December 31, 2020    |                                    |                                    |            |                              |
| Allowance for doubtful accounts | \$ 2,358                           | \$ 5,936                           | \$ 3,110   | \$ 5,184                     |

***Long-Term Investments***

Long-term investments consist of convertible and redeemable preferred securities in which the Company does not have a controlling interest or significant influence. These investments are reported at fair value using both observable and unobservable inputs and the valuation requires judgment. These investments are presented in long-term investments in the Consolidated Balance Sheets. All gains and losses on these investments, realized and unrealized, are recognized in other income (expense), net in the Consolidated Statements of Operations. The Company periodically reviews its long-term investments to determine whether events or changes in circumstances have occurred that could impact the fair value. Refer to Note 4 – *Fair Value of Financial Instruments* in this Annual Report on Form 10-K for further information regarding the Company’s assessment and fair value write-down of its long-term investment balance with Avaya.

***Marketable Equity Investments***

Marketable equity investments are equity securities in which the Company does not have a controlling interest or significant influence. These investments are reported at fair value using quoted prices in active markets. These investments are presented in long-term investments in the Consolidated Balance Sheets. All gains and losses on these investments, realized and unrealized, are recognized in other income (expense), net in the Consolidated Statements of Operations.

***Internal-Use Software Development Costs***

The Company capitalizes qualifying internal-use software development costs that are incurred during the application development stage, provided that management with the relevant authority authorizes and commits to the funding of the project, it is probable the project will be completed, and the software will be used to perform the function intended. Costs related to preliminary project activities and post implementation activities are expensed as incurred. Capitalized internal-use software development costs are included in property and equipment and are amortized on a straight-line basis over their estimated useful lives.

For the years ended December 31, 2022 and 2021, the Company capitalized \$59.2 million and \$50.1 million, net of impairment, of internal-use software development costs, respectively. The carrying value of internal-use software development costs was \$119.4 million and \$94.6 million at December 31, 2022 and 2021, respectively.

***Property and Equipment, net***

Property and equipment, net is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization are calculated on a straight-line basis over the estimated useful lives of those assets as follows:

|   |  |
|---|--|
| Computer hardware and software          | 3 to 5 years                                       |
| Internal-use software development costs | 3 to 5 years                                       |
| Furniture and fixtures                  | 1 to 5 years                                       |
| Leasehold improvements                  | Shorter of the estimated lease term or useful life |

The Company evaluates the recoverability of property and equipment and intangible assets for possible impairment whenever events or circumstances indicate that the carrying amount of such assets or asset groups may not be recoverable. Recoverability of these assets or asset groups is measured by comparing the carrying amounts of such assets or asset groups to the future undiscounted cash flows that such assets or asset groups are expected to generate. If this evaluation indicates that the carrying amount of the assets or asset groups is not recoverable, the carrying amount of such assets or asset groups is reduced to its estimated fair value.

Maintenance and repairs are charged to expense as incurred.

### ***Leases***

The Company determines if a contract is a lease or contains a lease at the inception of the contract and reassesses that conclusion if the contract is modified. All leases are assessed for classification as an operating lease or a finance lease. Operating lease right-of-use (“ROU”) assets are presented separately on the Company’s Consolidated Balance Sheets. Operating lease liabilities are separated into a current portion, included within accrued liabilities on the Company’s Consolidated Balance Sheets, and a non-current portion included within operating lease liabilities on the Company’s Consolidated Balance Sheets. The Company does not have significant finance lease ROU assets or liabilities. ROU assets represent the Company’s right to use an underlying asset for the lease term and lease liabilities represent its obligation to make lease payments arising from the lease. The Company does not obtain and control its right to use the identified asset until the lease commencement date.

The Company’s lease liabilities are recognized at the applicable lease commencement date based on the present value of the lease payments required to be paid over the lease term. Because the rate implicit in the lease is not readily determinable, the Company generally uses an incremental borrowing rate to discount the lease payments to present value. The estimated incremental borrowing rate is derived from information available at the lease commencement date. The Company factors in publicly available data for instruments with similar characteristics when calculating its incremental borrowing rates. The Company’s ROU assets are also recognized at the applicable lease commencement date. The ROU asset equals the carrying amount of the related lease liability, adjusted for any lease payments made prior to lease commencement and lease incentives provided by the lessor. Variable lease payments are expensed as incurred and do not factor into the measurement of the applicable ROU asset or lease liability.

The term of the Company’s leases is equal to the non-cancellable period of the lease, including any rent-free periods provided by the lessor, and also include options to renew or extend the lease (including by not terminating the lease) that the Company is reasonably certain to exercise. The Company establishes the term of each lease at lease commencement and reassesses that term in subsequent periods when one of the triggering events outlined in Topic 842, *Leases*, occurs. Operating lease cost for lease payments is recognized on a straight-line basis over the lease term.

The Company’s lease contracts often include lease and non-lease components. For facility leases, the Company has elected the practical expedient offered by the standard to not separate lease from non-lease components and accounts for them as a single lease component. For the Company’s other contracts that include leases, the Company accounts for the lease and non-lease components separately.

The Company has elected, for all classes of underlying assets, not to recognize ROU assets and lease liabilities for leases with a term of twelve months or less. Lease cost for short-term leases is recognized on a straight-line basis over the lease term. Additionally, for certain facility leases, the Company applies a portfolio approach, whereby it effectively accounts for the operating lease ROU assets and liabilities for multiple leases as a single unit of account because the accounting effect of doing so is not material.

### ***Goodwill and Intangible Assets***

Goodwill is tested for impairment at the reporting unit level at a minimum on an annual basis or more frequently when an event occurs or circumstances change that indicate that the carrying value may not be recoverable. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value. The Company conducted its annual impairment test of goodwill in the fourth quarter of 2022 and 2021 and determined that no adjustment to the carrying value of goodwill was required.

Intangible assets consist of purchased customer relationships and developed technology. Intangible assets are amortized over the period of estimated benefit using the straight-line method and estimated useful lives ranging from two to five years. No residual value is estimated for intangible assets.

### ***Concentrations***

Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. Although the Company deposits its cash with multiple financial institutions, its deposits, at times, may exceed federally insured limits. The Company’s accounts receivable are primarily derived from sales by resellers and to larger direct customers. The Company maintains an allowance for doubtful accounts for estimated potential credit losses. As of December 31, 2022, 2021 and 2020, and for the years then ended, none of the Company’s customers accounted for more than 10% of total accounts receivable, total revenues, or subscription revenues.



During the years ended 2021 and 2020, the Company contracted a significant portion of its software development efforts from third-party partners located in Russia and Ukraine. During the year ended December 31, 2022, the Company relocated some of their personnel to other countries. A cessation of services provided by these partners could result in a disruption to the Company's research and development efforts.

Long-lived assets by geographic location is based on the location of the legal entity that owns the asset. As of December 31, 2022 and 2021, approximately 94% and 95% of the Company's consolidated long-lived assets, respectively, were located in the U.S. No other single country outside of the U.S. represented more than 10% of the Company's consolidated long-lived assets as of December 31, 2022 and 2021.

### ***Revenue Recognition***

The Company derives its revenues primarily from subscriptions, sale of products, and professional services. Revenues are recognized when control of these services is transferred to the customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services.

The Company determines revenue recognition through the following steps:

- identification of the contract, or contracts, with a customer;
- identification of the performance obligations in the contract;
- determination of the transaction price;
- allocation of the transaction price to the performance obligations in the contract; and
- recognition of revenue when, or as, the Company satisfies a performance obligation.

The Company recognizes revenues as follows:

#### ***Subscriptions revenue***

Subscriptions revenue is generated from fees that provide customers access to one or more of the Company's software applications and related services. These arrangements have contractual terms typically ranging from one month to five years and include recurring fixed plan subscription fees, variable usage-based fees for usage in excess of plan limits, one-time fees, recurring license and other fees, derived from sales through our direct and indirect sales channels, including resellers and distributors, strategic partners and global service providers.

Arrangements with customers do not provide the customer with the right to take possession of the Company's software at any time. Instead, customers are granted continuous access to the services over the contractual period. The Company transfers control evenly over the contractual period by providing stand-ready service. Accordingly, the fixed consideration related to subscription is recognized over time on a straight-line basis over the contract term beginning on the date the Company's service is made available to the customer. The Company may offer its customer services for no consideration during the initial months. Such discounts are recognized ratably over the term of the contract.

Fees for additional minutes of usage in excess of plan limits are deemed to be variable consideration that meet the allocation exception for variable consideration as they are specific to the month that the usage occurs.

The Company's subscription contracts typically allow the customers to terminate their services within the first 30 to 60 days and receive a refund for any amounts paid for the remaining contract period. After the end of the termination period, the contract is non-cancellable and the customer is obligated to pay for the remaining term of the contract. Accordingly, the Company considers the non-cancellable term of the contract to begin after the expiration of the termination period.

The Company records reductions to revenue for estimated sales returns and customer credits at the time the related revenue is recognized. Sales returns and customer credits are estimated based on the Company's historical experience, current trends and the Company's expectations regarding future experience. The Company monitors the accuracy of its sales reserve estimates by reviewing actual returns and credits and adjusts them for its future expectations to determine the adequacy of its current and future reserve needs. If actual future returns and credits differ from past experience, additional reserves may be required.

#### *Other revenue*

Other revenue primarily includes revenue generated from sale of pre-configured phones and professional implementation services.

Phone revenue is recognized upon transfer of control to the customer which is generally upon shipment from the Company's or its designated agents' warehouse.

The Company offers professional services to support implementation and deployment of its subscription services. Professional services do not result in significant customization of the product and are generally short-term in duration. The majority of the Company's professional services contracts are on a fixed price basis and revenue is recognized as and when services are delivered.

#### *Principal vs. Agent*

A portion of the Company's subscriptions and product revenues are generated through sales by resellers, strategic partners, and global service providers. When the Company controls the performance of contractual obligations to the customer, it records these revenues at the gross amount paid by the customer with amounts retained by the resellers recognized as sales and marketing expenses. The Company assesses control of goods or services when it is primarily responsible for fulfilling the promise to provide the good or service, has inventory risk and has discretion in establishing the price.

#### *Deferred and prepaid sales commission costs*

The Company capitalizes sales commission expenses and associated payroll taxes paid to internal sales personnel and resellers, who sell the Company's offerings. The resellers are selling agents for the Company and earn sales commissions which are directly tied to the value of the contracts that the Company enters with the end-user customers. These sales commissions are incremental costs the Company incurs to obtain contracts with its end-user customers. The Company pays sales commissions on initial contracts and contracts for increased purchases with existing customers (expansion contracts). The Company generally does not pay sales commissions for contract renewals.

These sales commission costs are deferred and then amortized over the expected period of benefit, which is estimated to be five years. The Company has determined the period of benefit taking into consideration the expected subscription term and expected renewal periods of its customer contracts, the duration of its relationships with its customers considering historical and expected customer retention, technology and other factors. Amortization expense is included in sales and marketing expenses in the accompanying Consolidated Statements of Operations. The Company evaluates its deferred and prepaid sales commission costs for possible recoverability whenever events or changes in circumstances have occurred that could indicate the carrying amount of such assets may not be recoverable. Refer to Note 5 – *Strategic Partnerships and Asset Acquisitions* in this Annual Report on Form 10-K for further information regarding the Company's assessment of its recoverability and subsequent non-cash asset write-down of its deferred and prepaid sales commission balances with Avaya and ALE.

#### *Cost of Revenues*

Cost of subscriptions revenue primarily consists of costs of network capacity purchased from third-party telecommunications providers, network operations, costs to build out and maintain data centers, including co-location fees for the right to place the Company's servers in data centers owned by third-parties, depreciation of the servers and equipment, along with related utilities and maintenance costs, amortization of acquired technology related intangible assets, personnel costs associated with customer care and support of the functionality of the Company's platform and data center operations, including share-based compensation expenses, and allocated costs of facilities and information technology. Cost of subscriptions revenue is expensed as incurred.

Cost of other revenue is comprised primarily of the cost associated with purchased phones, personnel costs for employees and contractors, including share-based compensation expenses, shipping costs, costs of professional services, and allocated costs of facilities and information technology related to the procurement, management and shipment of phones. Cost of other revenue is expensed in the period product is delivered to the customer.

#### *Share-Based Compensation*

Share-based compensation expense resulting from options, restricted stock units ("RSUs"), performance-based awards, and employee stock purchase plan ("ESPP") rights granted is measured at the grant date fair value of the award and is generally recognized using the straight-line attribution method over the requisite service period of the award, which is generally the vesting period. The Company estimates the fair value of stock options, ESPP rights, and performance-based awards using the Black-Scholes-Merton option-pricing model. The Company estimates the fair value of RSUs as the closing market value of its

Class A Common Stock on the grant date. For awards with performance-based and service-based conditions, compensation cost is recognized over the requisite service period if it is probable that the performance condition will be satisfied. The expense for performance-based awards is evaluated each quarter based on the achievement of the performance conditions. The effect of a change in the estimated number of performance-based awards expected to be earned is recognized in the period those estimates are revised. Compensation expense is recognized net of estimated forfeiture activity, which is based on historical forfeiture rates.

#### ***Research and Development***

Research and development expenses consist primarily of third-party contractor costs, personnel costs, technology license expenses, and depreciation associated with research and development equipment. Research and development costs are expensed as incurred.

#### ***Advertising Costs***

Advertising costs, which include various forms of e-commerce such as search engine marketing, search engine optimization and online display advertising, as well as more traditional forms of media advertising such as radio and billboards, are expensed as incurred and were \$125.6 million, \$88.2 million, and \$76.6 million for the years ended December 31, 2022, 2021 and 2020, respectively.

#### ***Restructuring Costs***

Restructuring costs occur when management commits to a restructuring plan, the restructuring plan identifies all significant actions, the period of time to complete the restructuring plan indicates that significant changes to the plan are not likely and employees who are impacted have been notified of the pending involuntary termination. Restructuring costs are accrued in the period in which it is probable that the employees are entitled to the restructuring benefits and the amounts can be reasonably estimated.

#### ***Asset Write-down Charges***

Asset write-down charges consist of write-offs related to our assets, including deferred and prepaid sales commission and acquired intangibles balances, whenever events or changes in circumstances have occurred that could indicate the carrying amount of such assets may not be recoverable.

#### ***Convertible Debt***

Prior to the adoption of ASU 2020-06, the Company bifurcated the debt and equity (the contingently convertible feature) components of its convertible debt instruments in a manner that reflects its nonconvertible debt borrowing rate at the time of issuance. The equity components of the convertible debt instruments were recorded within stockholders' (deficit) equity with an allocated issuance discount. The debt issuance discount was amortized to interest expense in the Consolidated Statements of Operations using the effective interest method over the expected term of the convertible debt.

Upon adoption of ASU 2020-06 on January 1, 2022, the Company is no longer recording the conversion feature of its convertible senior notes in equity. Instead, the Company combined the previously separated equity component with the liability component, which together is now classified as debt, thereby eliminating the subsequent amortization of the debt discount as interest expense. Similarly, the portion of issuance costs previously allocated to equity was reclassified to debt and amortized as interest expense.

#### ***Income Taxes***

The Company accounts for income taxes using the asset and liability method. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. The Company records a valuation allowance to reduce its deferred tax assets to the amount of future tax benefit that is more likely than not to be realized. As of December 31, 2022, except for deferred tax assets associated with certain foreign subsidiaries, the Company recorded a full valuation allowance against substantially all of its net deferred tax assets due to its history of operating losses. The Company classifies interest and penalties on unrecognized tax benefits as income tax expense.

### ***Segment Information***

The Company has determined the chief executive officer is the chief operating decision maker. The Company's chief executive officer reviews financial information presented on a consolidated basis for purposes of assessing performance and making decisions on how to allocate resources. Accordingly, the Company has determined that it operates in a single reportable segment.

### ***Indemnification***

Certain of the Company's agreements with resellers and customers include provisions for indemnification against liabilities if its subscriptions infringe upon a third-party's intellectual property rights. At least quarterly, the Company assesses the status of any significant matters and its potential financial statement exposure. If the potential loss from any claim or legal proceeding is considered probable and the amount or the range of loss can be estimated, the Company accrues a liability for the estimated loss. The Company has not incurred any material costs as a result of such indemnification provisions. The Company has not accrued any material liabilities related to such obligations as of December 31, 2022 and 2021.

### ***Recent Accounting Pronouncements Not Yet Adopted***

In September 2022, the FASB issued ASU No. 2022-04, *Liabilities—Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations* ("ASU 2022-04"), which requires buyers that use supplier finance programs in connection with the purchase of goods and services to make certain annual disclosures regarding the programs' key terms and information about the obligations at the end of a reporting period, including a roll-forward of those obligations. Only the amount outstanding at the end of the period must be disclosed in interim periods. The amendments do not affect the recognition, measurement or financial statement presentation of supplier finance program obligations. The amendments in ASU 2022-04 are effective retrospectively for fiscal years beginning after December 15, 2022, including interim periods in those fiscal years, except for the requirement to disclose roll-forward information, which is effective prospectively for fiscal years beginning after December 15, 2023. Early adoption is permitted. The Company does not expect the adoption to have a material impact on the Company's financial statements.

### ***Recently Adopted Accounting Pronouncements***

In August 2020, the FASB issued ASU No. 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. This update simplifies the accounting for convertible instruments by eliminating the conversion option separation model for convertible debt that can be settled in cash. Consequently, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives. This update also eliminates the treasury stock method and instead requires entities to calculate the impact of convertible instruments on diluted earnings per share when the instruments may be settled in cash or shares. The required use of the if-converted method did not impact the diluted net loss per share as the Company was in a net loss position.

The Company adopted this update, effective January 1, 2022, using the modified retrospective method. Upon adoption, the Company is no longer recording the conversion feature of its convertible senior notes in equity. Instead, the Company combined the previously separated equity component with the liability component, which together is now classified as debt, thereby eliminating the subsequent amortization of the debt discount as interest expense. Similarly, the portion of issuance costs previously allocated to equity was reclassified to debt and amortized as interest expense. Accordingly, the Company recorded a decrease to accumulated deficit of approximately \$93.8 million, a decrease to additional paid-in capital of \$329.3 million, and an increase to convertible senior notes, net of approximately \$235.5 million. Prior period financial statements were not restated.

**Note 2. Revenue**
***Disaggregation of revenue***

Revenue by geographic location is based on the billing address of the customer. The following table provides information about disaggregated revenue by primary geographical markets:

|                              | Year ended December 31, |       |       |
|------------------------------|-------------------------|-------|-------|
|                              | 2022                    | 2021  | 2020  |
| Primary geographical markets |                         |       |       |
| North America                | 90 %                    | 88 %  | 92 %  |
| Others                       | 10 %                    | 12 %  | 8 %   |
| Total revenues               | 100 %                   | 100 % | 100 % |

The Company derived over 90% of subscription revenues from RingCentral MVP and RingCentral customer engagement solutions products for the years ended December 31, 2022, 2021, and 2020.

***Deferred revenue***

During the year ended December 31, 2022, the Company recognized approximately all of the corresponding deferred revenue balance at the beginning of the year as revenue.

***Remaining performance obligations***

The typical subscription term ranges from one month to five years. Contract revenue as of December 31, 2022 that has not yet been recognized was approximately \$2.1 billion. This excludes contracts with an original expected length of less than one year. Of these remaining performance obligations, the Company expects to recognize revenue of 53% of this balance over the next 12 months and 47% thereafter.

***Other revenues***

Other revenues are primarily comprised of product revenue from the sale of pre-configured phones, and professional services. Product revenues from the sale of pre-configured phones were \$46.6 million, \$48.8 million, and \$43.3 million for the years ended December 31, 2022, 2021 and 2020, respectively.

**Note 3. Financial Statement Components**

Cash and cash equivalents consisted of the following (in thousands):

|                                 | December 31,<br>2022 | December 31,<br>2021 |
|---------------------------------|----------------------|----------------------|
| Cash                            | \$ 88,153            | \$ 91,499            |
| Money market funds              | 181,831              | 175,663              |
| Total cash and cash equivalents | \$ 269,984           | \$ 267,162           |

As of December 31, 2022 and 2021, the Company's restricted cash balance, which is held in the form of a bank deposit for issuance of a foreign bank guarantee and also included in the cash balance above, was \$5.5 million.

Accounts receivable, net consisted of the following (in thousands):

|                                 | December 31,<br>2022 | December 31,<br>2021 |
|---------------------------------|----------------------|----------------------|
| Accounts receivable             | \$ 242,650           | \$ 193,192           |
| Unbilled accounts receivable    | 78,249               | 47,676               |
| Allowance for doubtful accounts | (9,581)              | (8,026)              |
| Accounts receivable, net        | \$ 311,318           | \$ 232,842           |

Prepaid expenses and other current assets consisted of the following (in thousands):

|   | December 31,<br>2022 | December 31,<br>2021 |
|---|----------------------|----------------------|
| Prepaid expenses                                | \$ 23,306            | \$ 26,254            |
| Inventory                                       | 1,209                | 5,655                |
| Other current assets                            | 31,334               | 16,256               |
| Total prepaid expenses and other current assets | <u>\$ 55,849</u>     | <u>\$ 48,165</u>     |

Property and equipment, net consisted of the following (in thousands):

|   | December 31,<br>2022 | December 31,<br>2021 |
|---|----------------------|----------------------|
| Computer hardware and software                  | \$ 221,727           | \$ 197,395           |
| Internal-use software development costs         | 199,642              | 140,424              |
| Furniture and fixtures                          | 8,937                | 8,660                |
| Leasehold improvements                          | 13,889               | 13,533               |
| Property and equipment, gross                   | 444,195              | 360,012              |
| Less: accumulated depreciation and amortization | (258,795)            | (193,102)            |
| Property and equipment, net                     | <u>\$ 185,400</u>    | <u>\$ 166,910</u>    |

Total depreciation and amortization expense related to property and equipment was \$72.0 million, \$58.9 million, and \$39.8 million for the years ended December 31, 2022, 2021 and 2020, respectively.

The carrying value of goodwill is as follows (in thousands):

|  |                  |
|--|------------------|
| Balance at December 31, 2021             | \$ 55,490        |
| Foreign currency translation adjustments | (1,155)          |
| Balance at December 31, 2022             | <u>\$ 54,335</u> |

The carrying values of intangible assets are as follows (in thousands):

|                                  | Weighted-Average<br>Remaining Useful<br>Life | December 31, 2022 |   |                                 | December 31, 2021 |   |                                 |
|----------------------------------|--|-------------------|---|---------------------------------|-------------------|---|---------------------------------|
|                                  |  | Cost              | Accumulated<br>Amortization And<br>Impairment | Acquired<br>Intangibles,<br>Net | Cost              | Accumulated<br>Amortization And<br>Impairment | Acquired<br>Intangibles,<br>Net |
| Customer relationships           | 0.8 years                                    | \$ 20,855         | \$ 19,090                                     | \$ 1,765                        | \$ 21,333         | \$ 15,725                                     | \$ 5,608                        |
| Developed technology             | 3.7 years                                    | 814,614           | 288,328                                       | 526,286                         | 814,873           | 103,875                                       | 710,998                         |
| Total acquired intangible assets |  | <u>\$ 835,469</u> | <u>\$ 307,418</u>                             | <u>\$ 528,051</u>               | <u>\$ 836,206</u> | <u>\$ 119,600</u>                             | <u>\$ 716,606</u>               |

Amortization expense from acquired intangible assets for the years ended December 31, 2022, 2021 and 2020 was \$174.5 million, \$66.4 million, and \$35.8 million, respectively. Amortization of developed technology is included in cost of revenues and amortization of customer relationships is included in sales and marketing expenses in the Consolidated Statements of Operations.

During the quarter ended December 31, 2022, the Company recorded a non-cash asset write-down charge of \$13.7 million on a portion of its acquired developed technology intangible assets, based on management's assessment that the carrying amount of such assets may not be fully recoverable.

Estimated amortization expense for acquired intangible assets for the following five fiscal years is as follows (in thousands):

|                                      |    |                |
|--------------------------------------|----|----------------|
| 2023                                 | \$ | 148,277        |
| 2024                                 |    | 133,798        |
| 2025                                 |    | 132,928        |
| 2026                                 |    | 112,639        |
| 2027 onwards                         |    | 409            |
| Total estimated amortization expense | \$ | <u>528,051</u> |

Accrued liabilities consisted of the following (in thousands):

|   | December 31,<br>2022 | December 31,<br>2021 |
|---|----------------------|----------------------|
| Accrued compensation and benefits             | \$ 53,419            | \$ 48,911            |
| Accrued sales, use, and telecom related taxes | 37,836               | 30,463               |
| Accrued marketing                             | 70,745               | 52,547               |
| Operating lease liabilities, short-term       | 17,513               | 18,686               |
| Accrued sales commission                      | 57,195               | —                    |
| Other accrued expenses                        | 143,405              | 129,191              |
| Total accrued liabilities                     | <u>\$ 380,113</u>    | <u>\$ 279,798</u>    |

#### **Deferred and Prepaid Sales Commission Costs**

Amortization expense for the deferred and prepaid sales commission costs for the years ended December 31, 2022, 2021 and 2020 were \$115.2 million, \$74.2 million, and \$47.2 million, respectively. There was no impairment loss in relation to the deferred commission costs capitalized for the periods presented.

#### **Note 4. Fair Value of Financial Instruments**

The Company measures and reports certain cash equivalents, including money market funds and certificates of deposit, in addition to its long-term investments at fair value in accordance with the provisions of the authoritative accounting guidance that addresses fair value measurements. This guidance establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available.

The hierarchy is broken down into three levels based on the reliability of the inputs as follows:

Level 1: Observable inputs that reflect unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2: Other inputs, such as quoted prices for similar assets or liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the asset or liability.

Level 3: Unobservable inputs that are supported by little or no market activity and that are based on management's assumptions, including fair value measurements determined by using pricing models, discounted cash flow methodologies or similar techniques.

The financial assets carried at fair value were determined using the following inputs (in thousands):

|                       | Fair Value at December 31,<br>2022 | Level 1    | Level 2 | Level 3 |
|-----------------------|------------------------------------|------------|---------|---------|
| Cash equivalents:     |                                    |            |         |         |
| Money market funds    | \$ 181,831                         | \$ 181,831 | \$ —    | \$ —    |
| Non-current assets:   |                                    |            |         |         |
| Long-term investments | 1,646                              | —          | —       | 1,646   |

|                               | Fair Value at December 31,<br>2021 | Level 1    | Level 2 | Level 3 |
|-------------------------------|------------------------------------|------------|---------|---------|
| <b>Cash equivalents:</b>      |                                    |            |         |         |
| Money market funds            | \$ 175,663                         | \$ 175,663 | \$ —    | \$ —    |
| <b>Non-current assets:</b>    |                                    |            |         |         |
| Long-term investments         | 199,965                            | —          | —       | 199,965 |
| Marketable equity investments | 8,600                              | 8,600      | —       | —       |

The Company's other financial instruments, including accounts receivable, accounts payable, and other current liabilities, are carried at cost, which approximates fair value due to the relatively short maturity of those instruments.

#### ***Long-Term Investments***

As of December 31, 2022 and 2021, the fair value of the Company's long-term investments in convertible and redeemable preferred stock was \$1.6 million and \$200.0 million, respectively. The Company classifies these investments as Level 3 in the fair value hierarchy based on the nature of the fair value inputs and judgment involved in the valuation process. The Company uses a lattice model to value these investments and relies on observable inputs including share-price, credit spread, and volatility. The model also incorporates judgments relating to the probability of special redemption triggers, the expected holding period of the investment, interest rates, probability of default, and expected recoverability. These investments are reported at fair value in long-term investments in the Consolidated Balance Sheets with net unrealized gain (loss) recorded in other income (expense). Volatility in the global economic climate and financial markets, including the effects of rising inflation and associated economic slowdown, the ongoing Russian invasion of Ukraine, and the investee's financial and liquidity position, could have an adverse impact on the fair value up the full amount of the long-term investment.

The Company considered recent public disclosures about Avaya's financial condition in connection with determining the fair value of its long-term investment. As a result, the Company recognized an unrealized loss of \$202.3 million and \$14.2 million for the years ended December 31, 2022 and 2021, respectively. Refer to Note 5 – *Strategic Partnerships and Asset Acquisitions* in this Annual Report on Form 10-K for further information regarding the Company's assessment and subsequent asset write-down balances with Avaya.

#### ***Marketable Equity Investments***

In October 2021, the Company invested \$10 million in cash in registered equity securities of a special purpose acquisition company ("SPAC"), which as a result of a completed merger converted into common shares of the publicly traded company. The Company did not have a controlling interest or a significant influence in the SPAC or the ultimate issuer. During the year ended December 31, 2022 and 2021, the Company recognized a loss from its marketable equity investments of \$5.4 million and \$1.4 million, respectively, which was reported in other income (expense) in the Consolidated Statement of Operations. During the year ended December 31, 2022, the Company completed the sale of its marketable equity investments for proceeds of \$3.2 million.

#### ***Other Non-Marketable Investments***

As of December 31, 2022, the Company had an immaterial amount of non-marketable investments held in debt and equity securities without readily determinable fair values in which it had neither a controlling interest nor significant influence. These investments are carried at cost under the measurement alternative as part of long-term investments in the Consolidated Balance Sheets.

#### ***Convertible Senior Notes***

As of December 31, 2022, the fair value of the 0% convertible senior notes due 2026 (the "2026 Notes") was approximately \$508.6 million, and the 0% convertible senior notes due 2025 (the "2025 Notes") was approximately \$860.0 million. The fair value for the convertible senior notes was determined based on the quoted price for such notes in an inactive market on the last trading day of the reporting period and is considered as Level 2 in the fair value hierarchy.



## **Note 5. Strategic Partnerships and Asset Acquisitions**

### ***Avaya Partnership***

In October 2019, the Company entered into certain agreements for a strategic partnership with Avaya Holdings Corp. (“Avaya”) and its subsidiaries, including Avaya Inc. (collectively, “Avaya”). In connection with the strategic partnership, the Company prepaid Avaya in the Company’s class A Common Stock predominantly for future sales commissions to be earned for each qualified unit of Avaya Cloud Office by RingCentral (“ACO”) sold during the term of the partnership. Under the terms of the partnership, the unutilized prepaid sales commissions were payable to the Company at the end of the contractual term.

On December 13, 2022, Avaya filed a Form 8-K disclosing ongoing discussions regarding one or more potential financings, refinancings, recapitalizations, reorganizations, restructurings or investment transactions. Further, on February 14, 2023, Avaya initiated an expedited, prepackaged financial restructuring via Chapter 11 with the support of its financial stakeholders. The Company and Avaya entered into a new extended and expanded agreement, which now includes certain minimum volume commitments and revised go-to-market incentive structure intended to drive migration to Avaya Cloud Office. The Company evaluates the recoverability of its long-term assets whenever events or circumstances indicate that the carrying amount of such assets may not be recoverable. In light of public disclosures about the likelihood of Avaya’s financial restructuring via Chapter 11, the Company recorded a non-cash asset write-down charge of \$279.3 million for the year ended December 31, 2022, out of which \$21.7 million of this balance was accrued interest and was recorded in other income (expense) in the Consolidated Statement of Operations. No portion of the impairment charge relates to future cash expenditures.

### ***Other Strategic Partnerships***

In 2021, the Company entered into strategic arrangements with Mitel US Holdings, Inc. (“Mitel”) whereby the Company would be Mitel’s exclusive provider of UCaaS offerings and cloud communications applications. Under the commercial arrangement, Mitel earns commissions in the form of cash and/or shares of Class A Common stock in connection with the migration of Mitel customers to RingCentral MVP. In connection with the Mitel partnership, the Company purchased certain intellectual property rights for consideration of \$649.4 million, of which \$300.0 million was paid in cash, \$299.4 million was settled in the form of 1,281,504 shares of the Company’s Class A Common Stock, and \$50.0 million was held back as a contingent consideration to be settled in the form of cash or shares of the Company’s Class A Common Stock on the achievement of specified performance metrics and also to cover for any potential indemnity claims post-closing. As of December 31, 2022, \$5.2 million and \$42.6 million of the contingent consideration remained recorded in accrued liabilities and other long-term liabilities, respectively, on the Company’s Consolidated Balance Sheet. Also in connection with the Mitel strategic partnership, the Company closed an Investment Agreement with Searchlight II MLN, L.P. (“Searchlight Investor”), Mitel’s principal shareholder, and Searchlight Investor purchased 200,000 shares of Series A Convertible Preferred Stock, par value \$0.0001 per share (the “Series A Convertible Preferred Stock”), for an aggregate purchase price of \$200.0 million. Refer to Note 9 – *Stockholders’ Deficit and Convertible Preferred Stock* in this Annual Report on Form 10-K for additional information.

The Company previously entered into strategic arrangements with certain strategic partners, under which these partners are engaged in the marketing and sale of the Company’s product offerings. Under these arrangements, the Company had paid approximately \$176.1 million, predominantly for future sales commissions. Such advance payments are considered incremental costs to obtain contracts with customers and are included in deferred and prepaid sales commission costs on the Consolidated Balance Sheets. Such pre-paid assets are being amortized to sales and marketing expense over their useful life based on the pattern of benefit.

During the quarter ended December 31, 2022, the Company updated the terms of its arrangement with certain strategic partners. The amended agreements change certain existing rights and obligations under the original contract and, in connection with these changes, a portion of the original advance payments were refunded. Pursuant to these amendments, the Company recorded a non-cash asset write-down charge of \$12.4 million for the year ended December 31, 2022, relating to such advance payments included in deferred and prepaid sales commission on the Consolidated Balance Sheets.

**Note 6. Convertible Senior Notes**

In March 2018, the Company issued \$460.0 million aggregate principal amount of 0% convertible senior notes due 2023 in a private placement, including the exercise in full of the over-allotment options of the initial purchasers (the “2023 Notes”). The 2023 Notes would have matured on March 15, 2023, unless repurchased or redeemed earlier by the Company or converted pursuant to their terms. The total net proceeds from the debt offering, after deducting initial purchase discounts and debt issuance costs, were approximately \$449.5 million. In the second quarter of 2021, the Company redeemed the remaining outstanding principal balance of its 2023 Notes.

In March 2020, the Company issued \$1.0 billion aggregate principal amount of 0% convertible senior notes due 2025 in a private placement to qualified institutional buyers (the “2025 Notes”). The 2025 Notes will mature on March 1, 2025, unless earlier repurchased or redeemed by the Company or converted pursuant to their terms. The total net proceeds from the debt offering, after deducting initial purchase discounts and debt issuance costs, were approximately \$986.5 million.

In September 2020, the Company issued \$650 million aggregate principal amount of 0% convertible senior notes due 2026 in a private placement to qualified institutional buyers (the “2026 Notes”). The 2026 Notes will mature on March 15, 2026, unless earlier repurchased or redeemed by the Company or converted pursuant to their terms. The total net proceeds from the debt offering, after deducting initial purchase discounts and debt issuance costs, were approximately \$640.2 million.

The 2023 Notes, 2025 Notes and 2026 Notes (collectively, the “Notes”) are senior, unsecured obligations of the Company that do not bear regular interest, and the principal amount of the Notes do not accrete. The Notes may bear special interest under specified circumstances relating to the Company’s failure to comply with its reporting obligations under the indentures governing each of the Notes (collectively, the “Notes Indentures”) or if the Notes are not freely tradable as required by each respective Notes Indenture.

***Redemption of 2023 Notes***

In March 2021, the Company delivered a notice to fully redeem the remaining outstanding \$41.2 million principal balance of its 0% convertible senior notes due 2023. During the three months ended June 30, 2021, the Company settled the redemption by paying \$160.1 million in cash. The redemption of the 2023 Notes resulted in a \$1.1 million loss that is included in other income (expense), net in the Consolidated Statement of Operations. The loss represents the difference between the fair value of the liability component and the sum of the carrying value of the debt component and any unamortized debt issuance costs at the time of settlement.

***Other Terms of the Notes***

|   | 2025 Notes    | 2026 Notes    |
|---|---------------|---------------|
| \$1,000 principal amount initially convertible into number of the Company’s Class A Common Stock par value \$0.0001 | 2.7745 shares | 2.3583 shares |
| Equivalent initial approximate conversion price per share   | \$ 360.43     | \$ 424.03     |

The conversion rate is subject to adjustment upon the occurrence of certain specified events but will not be adjusted for any accrued and unpaid special interest. In addition, upon the occurrence of a make-whole fundamental change or a redemption period, each as defined in the respective Notes Indentures, the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert its Notes in connection with such make-whole fundamental change or during the relevant redemption period.

The Notes will be convertible at certain times and upon the occurrence of certain events in the future. Further, on or after December 1, 2024 for the 2025 Notes, and December 15, 2025 for the 2026 Notes, until the close of business on the scheduled trading day immediately preceding the maturity date, holders of the Notes may convert all or a portion of their notes regardless of these conditions. Under the terms of the respective Notes Indentures, effective January 1, 2022, the Company made an irrevocable election to settle the principal portion of the Notes only in cash, with the conversion premium to be settled in cash or shares.

During the three months ended December 31, 2022, the conditions allowing holders of the 2025 Notes and 2026 Notes to convert were not met. The Notes may be convertible thereafter if one or more of the conversion conditions specified in the indentures are satisfied during future measurement periods.

The Company may redeem the 2025 Notes at its option, on or after March 5, 2022, and the 2026 Notes at its option, on or after March 20, 2023, at a redemption price equal to 100% of the principal amount thereof, plus accrued and unpaid special interest to, but excluding the redemption date, subject to certain conditions. No sinking fund is provided for the Notes.

Upon the occurrence of a fundamental change (as defined in each respective Notes Indentures) prior to the maturity date, holders may require the Company to repurchase all or a portion of the 2025 Notes or 2026 Notes for cash at a price equal to 100% of the principal amount of the Notes to be repurchased, plus any accrued and unpaid special interest to, but excluding, the fundamental change repurchase date.

#### *Accounting for the Notes*

In accounting for the issuance of the Notes, the Company separated the respective notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar debt instrument that does not have an associated convertible feature. The carrying amount of the equity component of the Notes representing the conversion option was determined by deducting the fair value of the liability component from the par value. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. The excess of the principal amount of the liability component over its carrying amount (“debt discount”) is amortized to interest expense at an effective interest rate over the contractual terms of the Notes.

In accounting for the transaction costs related to the Notes, the Company allocated the total amount incurred to the liability and equity components of the notes based on the proportion of the proceeds allocated to the debt and equity components. Issuance costs attributable to the liability component recorded as additional debt discount were \$10.9 million for the 2025 Notes and \$7.7 million for the 2026 Notes, which will be amortized to interest expense using the effective interest method over the contractual terms of the 2025 and 2026 Notes at an effective interest rate of 4.7%. Issuance costs attributable to the equity component of the Notes were netted with the equity component in stockholders’ equity.

The initial net carrying amount of the equity component of the Notes were as follows (in thousands):

|   | 2025 Notes | 2026 Notes |
|---|------------|------------|
| Proceeds allocated to the conversion option (debt discount) | \$ 195,074 | \$ 138,923 |
| Issuance cost   | (2,632)    | (2,085)    |
| Net carrying amount   | \$ 192,442 | \$ 136,838 |

Upon adoption of ASU 2020-06 on January 1, 2022, the Company is no longer recording the conversion feature of its convertible senior notes in equity. Instead, the Company combined the previously separated equity component with the liability component, which together is now classified as debt, thereby eliminating the subsequent amortization of the debt discount as interest expense. Similarly, the portion of issuance costs previously allocated to equity was reclassified to debt and amortized as interest expense. Accordingly, the Company recorded a decrease to accumulated deficit of approximately \$93.8 million, a decrease to additional paid-in capital of \$329.3 million, and an increase to convertible senior notes, net of approximately \$235.5 million.

The net carrying amount of the liability component of the Notes as of December 31, 2022 were as follows (in thousands):

|                                    | 2025 Notes   | 2026 Notes |
|------------------------------------|--------------|------------|
| Principal                          | \$ 1,000,000 | \$ 650,000 |
| Unamortized issuance cost          | (5,880)      | (5,709)    |
| Net carrying amount <sup>(1)</sup> | \$ 994,120   | \$ 644,291 |

(1) The net carrying amount was increased on January 1, 2022 as a result of the adoption of ASU No. 2020-06. Refer to Note 1 – *Description of Business and Summary of Significant Accounting Policies*, in this Annual Report on Form 10-K for further information.

The following table sets forth the total interest expense recognized related to the Notes (in thousands):

|  | Year ended December 31, |           |           |
|--|-------------------------|-----------|-----------|
|  | 2022                    | 2021      | 2020      |
| Amortization of debt discount <sup>(1)</sup>               | \$ —                    | \$ 60,932 | \$ 46,439 |
| Amortization of debt issuance cost <sup>(1)</sup>          | 4,468                   | 3,131     | 2,592     |
| Total interest expense related to the Notes <sup>(1)</sup> | \$ 4,468                | \$ 64,063 | \$ 49,031 |

(1) The decrease in total interest expense during the year ended December 31, 2022 was due to the derecognition of the unamortized debt discount, partially offset by the increase in the amortization of issuance costs previously recognized in equity. These changes were the result of the Company's adoption of ASU No. 2020-06, as of January 1, 2022, as described in Note 1 – *Description of Business and Summary of Significant Accounting Policies*.

### **Capped Calls**

In connection with the offering of the Notes, the Company entered into privately-negotiated capped call transactions relating to each series of notes with certain counterparties (collectively the "Capped Calls"). The initial strike price of the Notes corresponds to the initial conversion price of each of the Notes. The Capped Calls are generally intended to reduce or offset the potential dilution to the Class A Common Stock upon any conversion of the Notes with such reduction or offset, as the case may be, subject to a cap based on the cap price. The Capped Calls are subject to either adjustment or termination upon the occurrence of specified extraordinary events affecting the Company, including a merger event; a tender offer; and a nationalization, insolvency or delisting involving the Company. In addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including changes in law; insolvency filings; and hedging disruptions. The Capped Call transactions are recorded in stockholders' equity and are not accounted for as derivatives.

The following table below sets forth key terms and costs incurred for the Capped Calls related to each of the Notes:

|  | 2023 Notes | 2025 Notes | 2026 Notes |
|--|------------|------------|------------|
| Initial approximate strike price per share, subject to certain adjustments       | \$ 81.45   | \$ 360.43  | \$ 424.03  |
| Initial cap price per share, subject to certain adjustments                      | \$ 119.04  | \$ 480.56  | \$ 556.10  |
| Net cost incurred (in millions)  | \$ 49.9    | \$ 60.9    | \$ 41.8    |
| Class A Common Stock covered, subject to anti-dilution adjustments (in millions) | 5.6        | 2.8        | 1.5        |
| Settlement commencement date   | 1/13/2023  | 1/31/2024  | 2/13/2025  |
| Settlement expiration date   | 3/13/2023  | 2/28/2024  | 3/13/2025  |

All of the capped call transactions, including the capped call relating to the 2023 Notes, were outstanding as of December 31, 2022.

### **Note 7. Leases**

The Company primarily leases facilities for office and data center space under non-cancelable operating leases for its U.S. and international locations. As of December 31, 2022, non-cancelable leases expire on various dates between 2023 and 2029.

Generally, the non-cancelable leases include one or more options to renew, with renewal terms that can extend the lease term from one to five years or more. The Company has the right to exercise or forego the lease renewal options. The lease agreements do not contain any material residual value guarantees or material restrictive covenants.

As of December 31, 2022 and 2021, the components of leases and lease costs are as follows (in thousands):

|                                     | December 31, 2022 | December 31, 2021 |
|-------------------------------------|-------------------|-------------------|
| <b>Operating leases</b>             |                   |                   |
| Operating lease right-of-use assets | \$ 35,433         | \$ 47,294         |
| Accrued liabilities                 | \$ 17,513         | \$ 18,686         |
| Operating lease liabilities         | 20,182            | 31,812            |
| Total operating lease liabilities   | \$ 37,695         | \$ 50,498         |

|                          | Year ended December 31, |           |           |
|--------------------------|-------------------------|-----------|-----------|
|                          | 2022                    | 2021      | 2020      |
| <b>Lease Cost</b>        |                         |           |           |
| Operating lease cost (a) | \$ 26,730               | \$ 25,053 | \$ 21,031 |

<sup>(a)</sup> Includes short-term leases and variable lease costs, which are immaterial.

Maturities of operating lease liabilities as of December 31, 2022 are presented in the table below (in thousands):

|                                     |    |         |
|-------------------------------------|----|---------|
| Year Ending December 31,            |    |         |
| 2023                                | \$ | 18,984  |
| 2024                                |    | 8,292   |
| 2025                                |    | 6,213   |
| 2026                                |    | 4,034   |
| 2027                                |    | 1,327   |
| 2028 onwards                        |    | 2,078   |
| Total future minimum lease payments |    | 40,928  |
| Less: Imputed interest              |    | (3,233) |
| Present value of lease liabilities  | \$ | 37,695  |

Other supplemental information is as follows:

|   | December 31, 2022 | December 31, 2021 |
|---|-------------------|-------------------|
| <b>Lease Term and Discount Rate</b>                     |                   |                   |
| Weighted-average remaining operating lease term (years) | 3.1               | 3.7               |
| Weighted-average operating lease discount rate          | 5 %               | 5 %               |

|  | Year ended December 31, |           |
|--|-------------------------|-----------|
|  | 2022                    | 2021      |
| <b>Supplemental Cash Flow Information (in thousands)</b>               |                         |           |
| Operating cash flows resulting from operating leases:                  |                         |           |
| Cash paid for amounts included in the measurement of lease liabilities | \$ 22,899               | \$ 21,246 |
| New ROU assets obtained in exchange of lease liabilities:              |                         |           |
| Operating leases   | \$ 8,771                | \$ 14,530 |

## Note 8. Commitments and Contingencies

### *Legal Matters*

The Company is subject to certain legal proceedings described below, and from time to time may be involved in a variety of claims, lawsuits, investigations, and proceedings relating to contractual disputes, intellectual property rights, employment matters, regulatory compliance matters, and other litigation matters relating to various claims that arise in the normal course of business.

The Company determines whether an estimated loss from a contingency should be accrued by assessing whether a loss is deemed probable and can be reasonably estimated. The Company assesses its potential liability by analyzing specific litigation and regulatory matters using reasonably available information. The Company develops its views on estimated losses in consultation with inside and outside counsel, which involves a subjective analysis of potential results and outcomes, assuming various combinations of appropriate litigation and settlement strategies. Actual claims could settle or be adjudicated against the Company in the future for materially different amounts than the Company has accrued due to the inherently unpredictable nature of litigation. Legal fees are expensed in the period in which they are incurred.

### *Patent Infringement Matter*

On April 25, 2017, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together, “Uniloc”) filed in the U.S. District Court for the Eastern District of Texas two actions against the Company alleging infringement of U.S. Patent Nos. 7,804,948; 7,853,000; and 8,571,194 by RingCentral’s Glip unified communications application. The plaintiffs seek a declaration that the Company has infringed the patents, damages according to proof, injunctive relief, as well as their costs, attorney’s fees, expenses and interest. On October 9, 2017, the Company filed a motion to dismiss or transfer requesting that the case be transferred to the United States District Court for the Northern District of California. In response to the motion, plaintiffs filed a first amended complaint on October 24, 2017. The Company filed a renewed motion to dismiss or transfer on November 15, 2017. Although briefing on that motion has been completed, the motion has not yet been decided. On February 5, 2018, Uniloc moved to stay the litigation pending the resolution of certain third-party inter partes review proceedings (“IPRs”) before the United States Patent and Trademark Office. On February 9, 2018, the court stayed the litigation pending resolution of the IPRs without prejudice to or waiver of the Company’s motion to dismiss or transfer. This litigation is still in its early stages. Based on the information known by the Company as of the date of this filing and the rules and regulations applicable to the preparation of the Company’s consolidated financial statements, it is not possible to provide an estimated amount of any such loss or range of loss that may occur. The Company intends to vigorously defend against this lawsuit.

### *CIPA Matter*

On June 16, 2020, Plaintiff Meena Reuben (“Reuben”) filed a complaint against the Company for a putative class action lawsuit in California Superior Court for San Mateo County. The complaint alleges claims on behalf of a class of individuals for whom, while they were in California, the Company allegedly intercepted and recorded communications between individuals and the Company’s customers without the individual’s consent, in violation of the California Invasion of Privacy Act (“CIPA”) Sections 631 and 632.7. Reuben seeks statutory damages of \$5,000 for each alleged violation of Sections 631 and 632.7, injunctive relief, and attorneys’ fees and costs, and other unspecified amount of damages. The parties participated in mediation on August 24, 2021. On September 16, 2021, Reuben filed an amended complaint. The Company filed a demurrer to the amended complaint on October 18, 2021. The Court overruled the Company’s demurrer and the parties are now engaged in discovery. RingCentral filed a motion for judgment on the pleadings on January 23, 2023. This litigation is still in its early stages. Based on the information known by the Company as of the date of this filing and the rules and regulations applicable to the preparation of the Company’s consolidated financial statements, it is not possible to provide an estimated amount of any such loss or range of loss that may occur. The Company intends to vigorously defend against this lawsuit.

*Other Matter*

On June 14, 2019, the Company filed suit in the Superior Court of California, County of Alameda, against Bright Pattern, Inc. and two of its officers, alleging that the defendants negotiated a potential acquisition of Bright Pattern by RingCentral fraudulently and in bad faith. The Company seeks its costs incurred in negotiating under the Letter of Intent (“LOI”) that the parties entered into and damages for lost opportunity as a result of forgoing another acquisition opportunity, and attorneys’ fees and costs. On August 26, 2019, Bright Pattern filed a cross-complaint against the Company and two of its executive officers alleging breach of the LOI as well as tort claims arising from the Company’s allegedly inducing Bright Pattern to enter into the LOI and subsequent extensions while allegedly misstating the timeframe for the proposed transaction. As damages, Bright Pattern seeks audit fees it allegedly incurred, a \$5 million break-up fee, its alleged “cash burn” during the negotiations, and unspecified lost opportunity damages. The Company filed a demurrer to Bright Pattern’s amended cross-complaint, as well as a related motion to strike. On May 7, 2020, the court denied both the motion to strike and demurrer. On July 19, 2022, the parties filed a joint motion to stay the proceedings, which the court granted on July 20, 2022. Based on the information known by the Company as of the date of this filing and the rules and regulations applicable to the preparation of the Company’s consolidated financial statements, it is not possible to provide an estimated amount of any loss or range of loss that may occur. The Company intends to vigorously prosecute and defend this lawsuit.

*Employee Agreements*

The Company has signed various employment agreements with executives and key employees pursuant to which if the Company terminates their employment without cause or if the employee terminates his or her employment for good reason following a change of control of the Company, the employees are entitled to receive certain benefits, including severance payments, accelerated vesting of stock options and RSUs, and continued COBRA coverage. As of December 31, 2022, no triggering events which would cause these provisions to become effective have occurred. Therefore, no liabilities have been recorded for these agreements in the consolidated financial statements.

**Note 9. Stockholders’ Deficit and Convertible Preferred Stock**

In connection with the Company’s initial public offering, the Company reincorporated in Delaware on September 26, 2013. The Delaware certificate of incorporation provides for two classes of common stock: Class A and Class B Common Stock, both with a par value of \$0.0001 per share. In addition, the certificate of incorporation authorizes shares of undesignated preferred stock with a par value of \$0.0001 per share, pursuant to which on November 9, 2021, the Company filed a certificate of designations authorizing the issuance of 200,000 shares of Series A Convertible Preferred Stock. The terms of preferred stock are described below.

*Preferred Stock*

The board of directors may, without further action by the stockholders, fix the powers, designations, preferences, or relative participating, optional, or other rights, and the qualifications, limitations, and restrictions of up to an aggregate of 100,000,000 shares of preferred stock in one or more series and authorizes their issuance. These rights, preferences, and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of the Class A and Class B Common Stock. As of December 31, 2022 and 2021, there were 100,000,000 shares of preferred stock authorized, 200,000 shares of which are issued and outstanding as Series A Convertible Preferred Stock.

*Class A and Class B Common Stock*

The Company has authorized 1,000,000,000 and 250,000,000 shares of Class A Common Stock and Class B Common Stock for issuance, respectively. Holders of Class A Common Stock and Class B Common Stock have identical rights for matters submitted to a vote of the Company’s stockholders. Holders of Class A Common Stock are entitled to one vote per share of Class A Common Stock and holders of Class B Common Stock are entitled to 10 votes per share of Class B Common Stock. Holders of shares of Class A Common Stock and Class B Common Stock vote together as a single class on all matters (including the election of directors) except for specific circumstances that would adversely affect the powers, preferences, or rights of a particular class of Common Stock. Subject to preferences that may apply to any shares of preferred stock outstanding at the time, holders of Class A and Class B Common Stock share equally, identically and ratably, on a per share basis, with respect to any dividend or distribution of cash, property or shares of the Company’s capital stock. Holders of Class A and Class B Common Stock also share equally, identically, and ratably in all assets remaining after the payment of any liabilities and liquidation preferences and any accrued or declared but unpaid dividends, if any, with respect to any outstanding preferred stock at the time. Each share of Class B Common Stock is convertible at any time at the option of the holder into one share of Class A Common Stock. In addition, each share of Class B Common Stock will convert automatically to Class A Common

Stock upon: (i) the date specified by an affirmative vote or written consent of holders of at least 67% of the outstanding shares of Class B Common Stock, (ii) the date on which the number of outstanding shares of Class B Common Stock represents less than 10% of the aggregate combined number of outstanding shares of Class A Common Stock and Class B Common Stock, or (iii) any time seven years after the Company's initial public offering (October 2, 2020), when a stockholder owns less than 50% of the shares of Class B Common Stock that such holder owned immediately prior to completion of the initial public offering.

Shares of Class A Common Stock reserved for future issuance were as follows (in thousands):

|  | <u>December 31, 2022</u> |
|--|--------------------------|
| Preferred stock                                      | 100,000                  |
| Class B Common Stock                                 | 9,925                    |
| 2013 Employee stock purchase plan                    | 6,055                    |
| 2013 Equity incentive plan:                          |                          |
| Outstanding options and restricted stock unit awards | 5,123                    |
| Available for future grants                          | 19,648                   |
|  | <u>140,751</u>           |

### ***Share Repurchase Program***

On December 13, 2021, the Company's board of directors authorized a share repurchase program to repurchase up to \$100 million of the Company's outstanding shares of Class A Common Stock. During the year ended December 31, 2022, the Company repurchased and subsequently retired 2,297,330 shares of our Class A Common Stock for an aggregate amount of approximately \$100 million. The Company completed its share repurchase program on December 31, 2022.

### ***Series A Convertible Preferred Stock***

On November 8, 2021, the Company entered into the Investment Agreement, pursuant to which the Company sold to Searchlight Investor, in a private placement exempt from registration under the Securities Act of 1933, as amended, 200,000 shares of newly issued Series A Convertible Preferred Stock, par value \$0.0001 per share, for an aggregate purchase price of \$200 million. The Series A Convertible Preferred Stock issued to Searchlight Investor pursuant to the Investment Agreement is convertible into shares of the Company's Class A Common Stock, par value \$0.0001 per share, at a conversion price of \$269.22 per share, subject to adjustment as provided in the certificate of designations specifying the terms of such shares. The transactions contemplated by the Investment Agreement closed on November 9, 2021. The Series A Convertible Preferred Stock ranks senior to the shares of the Company's Class A Common Stock and Class B Common Stock with respect to rights on the distribution of assets on any voluntary or involuntary liquidation or winding up of the affairs of the Company. The Series A Convertible Preferred Stock is a zero coupon, perpetual preferred stock, with a liquidation preference of \$1,000 per share and other customary terms, including with respect to mandatory conversion and change of control premium under certain circumstances. The shares of Series A Convertible Preferred Stock shall not be redeemable or otherwise mature, other than for a liquidation or a specified change in control event as provided in the certificate of designations specifying the terms of such shares. Holders of Series A Convertible Preferred Stock will be entitled to vote with the holders of the Class A Common Stock and Class B Common Stock on an as-converted basis. Holders of the Series A Convertible Preferred Stock will be entitled to a separate class vote with respect to, among other things, certain amendments to the Company's organizational documents that have an adverse impact on the rights, preferences, privileges or voting power of the Series A Convertible Preferred Stock, authorizations or issuances of Company capital stock, or other securities convertible into capital stock, that is senior to, or equal in priority with, the Series A Convertible Preferred Stock, and increases or decreases in the number of authorized shares of Series A Convertible Preferred Stock.

As the liquidation or specified change in control event is not solely within the Company's control, the Series A Convertible Preferred Stock is therefore classified as temporary equity and recorded outside of stockholders' equity on the Consolidated Balance Sheet. As of December 31, 2022 and 2021, there were 200,000 shares of the Company's Series A Convertible Preferred Stock issued and outstanding, and the carrying value, net of issuance costs, was \$199.4 million.



**Note 10. Share-Based Compensation**

A summary of share-based compensation expense recognized in the Company's Consolidated Statements of Operations is as follows (in thousands):

|  | Year ended December 31, |                   |                   |
|--|-------------------------|-------------------|-------------------|
|  | 2022                    | 2021              | 2020              |
| Cost of revenues                       | \$ 34,269               | \$ 29,307         | \$ 14,275         |
| Research and development               | 88,846                  | 83,042            | 39,283            |
| Sales and marketing                    | 151,950                 | 137,924           | 64,240            |
| General and administrative             | 110,944                 | 107,692           | 71,802            |
| Total share-based compensation expense | <u>\$ 386,009</u>       | <u>\$ 357,965</u> | <u>\$ 189,600</u> |

A summary of share-based compensation expense by award type is as follows (in thousands):

|  | Year ended December 31, |                   |                   |
|--|-------------------------|-------------------|-------------------|
|  | 2022                    | 2021              | 2020              |
| Options                                | \$ —                    | \$ 1              | \$ 44             |
| Employee stock purchase plan rights    | 7,719                   | 9,573             | 7,161             |
| Restricted stock units                 | 378,290                 | 348,391           | 182,395           |
| Total share-based compensation expense | <u>\$ 386,009</u>       | <u>\$ 357,965</u> | <u>\$ 189,600</u> |

**Equity Incentive Plans**

In September 2013, the Board adopted and the Company's stockholders approved the 2013 Equity Incentive Plan, which became effective on September 26, 2013, and the stockholders approved an amended and restated 2013 Equity Plan on December 15, 2022 (together, "2013 Plan"). In connection with the adoption of the 2013 Plan, the Company terminated the 2010 Equity Incentive Plan ("2010 Plan"), under which stock options had been granted prior to September 26, 2013. The 2010 Plan was established in September 2010, when the 2003 Equity Incentive Plan ("2003 Plan") was terminated. After the termination of the 2003 and 2010 Plans, no additional options were granted under these plans; however, options previously granted under these plans will continue to be governed by these plans and will be exercisable into shares of Class B Common Stock. In addition, options authorized to be granted under the 2003 and 2010 Plans, including forfeitures of previously granted awards, are authorized for grant under the 2013 Plan.

A total of 6,200,000 shares of Class A Common Stock were originally reserved for issuance under the 2013 Plan. The 2013 Plan includes an annual increase on the first day of each fiscal year beginning in 2014, equal to the least of: (i) 6,200,000 shares of Class A Common Stock; (ii) 5% of the outstanding shares of all classes of common stock as of the last day of the Company's immediately preceding fiscal year; or (iii) such other amount as the board of directors may determine. During the year ended December 31, 2022, a total of 4,715,470 shares of Class A Common Stock were added to the 2013 Plan in connection with the annual automatic increase provision. As of December 31, 2022, a total of 19,648,499 shares remain available for grant under the 2013 Plan.

The plans permit the grant of stock options and other share-based awards, such as restricted stock units, to employees, officers, directors, and consultants by the board of directors. Option awards are generally granted with an exercise price equal to the fair market value of the Company's Class A Common Stock at the date of grant. Option awards generally vest according to a graded vesting schedule based on four years of continuous service. On January 29, 2014, the board of directors approved an amendment to decrease the contractual term of all equity awards issued from the 2013 Plan from 10 years to 7 years for all awards granted after January 29, 2014. Certain option awards provide for accelerated vesting if there is a change in control (as defined in the option agreement) and early exercise of options prior to vesting (subject to the Company's repurchase right).

A summary of option activity under all of the Company's equity incentive plans at December 31, 2022 and changes during the period then ended is presented in the following table:

|   | Number of Options Outstanding (in thousands) | Weighted-Average Exercise Price Per Share | Weighted-Average Contractual Term (in Years) | Aggregate Intrinsic Value (in thousands) |
|---|--|---|--|--|
| Outstanding at December 31, 2019                    | 2,257  | \$ 13.13                                  | 2.5  | \$ 351,428                               |
| Exercised   | (1,360)                                      | 13.87                                     |  |  |
| Canceled/Forfeited                                  | —  | —   |  |  |
| Outstanding at December 31, 2020                    | 897  | \$ 12.02                                  | 1.7  | \$ 329,151                               |
| Exercised   | (741)  | 12.58                                     |  |  |
| Canceled/Forfeited                                  | (2)  | 27.45                                     |  |  |
| Outstanding at December 31, 2021                    | 154  | \$ 9.12                                   | 0.9  | \$ 27,465                                |
| Exercised   | (132)  | 8.54                                      |  |  |
| Canceled/Forfeited                                  | —  | —   |  |  |
| Outstanding at December 31, 2022                    | 22   | \$ 12.53                                  | 0.5  | \$ 509                                   |
| Vested and expected to vest as of December 31, 2022 | 22   | \$ 12.53                                  | 0.5  | \$ 509                                   |
| Exercisable as of December 31, 2022                 | 22   | \$ 12.53                                  | 0.5  | \$ 509                                   |

There were no options granted for the year ended December 31, 2022 and 2021. The total intrinsic value of options exercised during year ended December 31, 2022, 2021 and 2020 were \$13.6 million, \$190.7 million, and \$343.7 million, respectively. There is no remaining unamortized share-based compensation expense related to options.

#### **Employee Stock Purchase Plan**

The Company's Employee Stock Purchase Plan ("ESPP") allows eligible employees to purchase shares of the Company's Class A Common Stock at a discounted price, through payroll deductions of up to the lesser of 15% of their eligible compensation or the IRS allowable limit per calendar year. A participant may purchase a maximum of 3,000 shares during an offering period. The offering periods are for a period of six months and generally start on the first trading day on or after May 13th and November 13th of each year. At the end of the offering period, the purchase price is set at the lower of: (i) 85% of the fair value of the Company's common stock at the beginning of the six-month offering period and (ii) 85% of the fair value of the Company's Class A Common Stock at the end of the six-month offering period.

The ESPP provides for annual increases in the number of shares available for issuance under the ESPP on the first day of each fiscal year beginning in fiscal 2014, equal to the least of: (i) 1% of the outstanding shares of all classes of common stock on the last day of the immediately preceding year; (ii) 1,250,000 shares; or (iii) such other amount as may be determined by the board of directors. During the year ended December 31, 2022, a total of 943,094 shares of Class A Common Stock were added to the ESPP Plan in connection with the annual increase provision. At December 31, 2022, a total of 6,054,525 shares were available for issuance under the ESPP.

The weighted-average assumptions used to value ESPP rights under the Black-Scholes-Merton option-pricing model and the resulting offering grant date fair value of ESPP rights granted in the periods presented were as follows:

|   | Year ended December 31, |          |          |
|---|-------------------------|----------|----------|
|   | 2022                    | 2021     | 2020     |
| Expected term (in years)                      | 0.5                     | 0.5      | 0.5      |
| Expected volatility                           | 81 %                    | 48 %     | 63 %     |
| Risk-free interest rate                       | 3.01 %                  | 0.05 %   | 0.13 %   |
| Expected dividend yield                       | 0 %                     | 0 %      | 0 %      |
| Offering grant date fair value of ESPP rights | \$ 20.18                | \$ 71.27 | \$ 79.85 |

As of December 31, 2022 and 2021, there was approximately \$4.4 million and \$4.2 million of unrecognized share-based compensation expense, net of estimated forfeitures, related to ESPP, which will be recognized on a straight-line basis over the remaining weighted-average vesting periods of approximately 0.4 years.

### Restricted Stock Units

The 2013 Plan provides for the issuance of RSUs to employees, directors, and consultants. RSUs issued under the 2013 Plan generally vest over four years. A summary of activity of RSUs under the 2013 Plan at December 31, 2022 and changes during the periods then ended is presented in the following table:

|                                  | Number of<br>RSUs<br>Outstanding<br>(in thousands) | Weighted-<br>Average<br>Grant Date Fair<br>Value Per Share | Aggregate<br>Intrinsic<br>Value<br>(in thousands) |
|----------------------------------|--|--|---|
| Outstanding at December 31, 2019 | 3,249  | \$ 85.39   | \$ 548,145  |
| Granted                          | 1,599  | 236.97   |   |
| Released                         | (1,804)  | 99.31  |   |
| Canceled/Forfeited               | (319)  | 111.47   |   |
| Outstanding at December 31, 2020 | 2,725  | \$ 162.04  | \$ 1,032,997                                      |
| Granted                          | 2,792  | 299.53   |   |
| Released                         | (1,811)  | 185.55   |   |
| Canceled/Forfeited               | (855)  | 240.21   |   |
| Outstanding at December 31, 2021 | 2,851  | \$ 258.26  | \$ 534,186  |
| Granted                          | 5,999  | 72.96  |   |
| Released                         | (2,787)  | 131.18   |   |
| Canceled/Forfeited               | (963)  | 206.32   |   |
| Outstanding at December 31, 2022 | 5,100  | \$ 119.55  | \$ 180,577  |

As of December 31, 2022 and 2021, there was a total of \$422.3 million and \$554.1 million of unrecognized share-based compensation expense, net of estimated forfeitures, related to RSUs, which will be recognized on a straight-line basis over the remaining weighted-average vesting periods of approximately 2.8 years.

### Bonus Plan

The Company's board of directors (the "Board") adopted employee equity bonus plans (the "Bonus Plans"), which allow the recipients to earn fully vested shares of the Company's Class A Common Stock upon the achievement of quarterly service and performance conditions. During the year ended December 31, 2022 and 2021, 813,330 and 173,441 RSUs were issued under the Company's Key Employee Equity Bonus Plan ("KEEB Plans"), respectively. The total requisite service period of each quarterly award is approximately 0.4 years.

The unrecognized share-based compensation expense as of December 31, 2022 was approximately \$4.4 million, which will be recognized over the remaining service period of 0.1 years. The shares issued under the KEEB Plans will be issued from the reserve of shares available for issuance under the 2013 Plan.

### Note 11. Income Taxes

Net loss before provision for income taxes consisted of the following (in thousands):

|  | Year ended December 31, |              |             |
|--|-------------------------|--------------|-------------|
|  | 2022                    | 2021         | 2020        |
| United States                                    | \$ (898,036)            | \$ (394,392) | \$ (93,979) |
| International                                    | 23,983                  | 20,670       | 11,917      |
| Total net loss before provision for income taxes | \$ (874,053)            | \$ (373,722) | \$ (82,062) |

The provision for income taxes consisted of the following (in thousands):

|                                   | Year ended December 31, |                 |                 |
|-----------------------------------|-------------------------|-----------------|-----------------|
|                                   | 2022                    | 2021            | 2020            |
| <b>Current</b>                    |                         |                 |                 |
| Federal                           | \$ —                    | \$ —            | \$ —            |
| State                             | 1,104                   | 746             | 208             |
| Foreign                           | 4,710                   | 3,580           | 1,386           |
| Total current                     | <u>\$ 5,814</u>         | <u>\$ 4,326</u> | <u>\$ 1,594</u> |
| <b>Deferred</b>                   |                         |                 |                 |
| Federal                           | \$ —                    | \$ —            | \$ —            |
| State                             | —                       | —               | —               |
| Foreign                           | (701)                   | (1,798)         | (660)           |
| Total deferred                    | <u>(701)</u>            | <u>(1,798)</u>  | <u>(660)</u>    |
| <b>Total income tax provision</b> | <u>\$ 5,113</u>         | <u>\$ 2,528</u> | <u>\$ 934</u>   |

The provision for (benefit from) income tax differed from the amounts computed by applying the U.S. federal income tax rate to pretax loss as a result of the following (in thousands):

|   | Year ended December 31, |                 |               |
|---|-------------------------|-----------------|---------------|
|   | 2022                    | 2021            | 2020          |
| Federal tax benefit at statutory rate                       | \$ (183,551)            | \$ (78,482)     | \$ (17,233)   |
| State tax, net of federal tax benefit                       | 848                     | 314             | 164           |
| Research and development credits                            | (12,830)                | (10,135)        | (9,330)       |
| Share-based compensation                                    | 5,828                   | (45,501)        | (93,866)      |
| Debt extinguishment   | 19                      | 365             | 2,790         |
| Other permanent differences                                 | 3,143                   | 835             | 10            |
| Change in U.S. federal Tax Rate                             | —                       | —               | —             |
| Foreign tax rate differential                               | (2,497)                 | (4,104)         | (694)         |
| Net operating (gains) losses not recognized                 | 194,153                 | 139,236         | 119,093       |
| Release of valuation allowance associated with acquisitions | —                       | —               | —             |
| <b>Total income tax provision</b>                           | <u>\$ 5,113</u>         | <u>\$ 2,528</u> | <u>\$ 934</u> |

In general, it is the Company's practice and intention to reinvest the earnings of its non-U.S. subsidiaries in those operations. Because the Company's non-U.S. subsidiary earnings have previously been subject to the one-time transition tax on foreign earnings required by the 2017 Tax Act, any additional taxes due with respect to such earnings or the excess of the amount for financial reporting over the tax basis of its foreign investments would generally be limited to foreign withholding taxes and/or U.S. state income taxes.

The types of temporary differences that give rise to significant portions of the Company's deferred tax assets and liabilities are as follows (in thousands):

|  | Year ended December 31, |            |
|--|-------------------------|------------|
|  | 2022                    | 2021       |
| Deferred tax assets                          |                         |            |
| Net operating loss and credit carry-forwards | \$ 491,323              | \$ 506,352 |
| Research and development credits             | 71,756                  | 53,890     |
| Capitalized Research Expenditures            | 75,821                  | —          |
| Basis difference in investments              | 107,756                 | —          |
| Sales tax liability                          | 90                      | 158        |
| Share-based compensation                     | 14,986                  | 12,859     |
| Acquired intangibles                         | 50,156                  | 15,427     |
| Accrued liabilities                          | 16,550                  | 18,100     |
| Gross deferred tax assets                    | 828,438                 | 606,786    |
| Valuation allowance                          | (669,690)               | (425,599)  |
| Total deferred tax assets                    | 158,748                 | 181,187    |
| Deferred tax liabilities                     |                         |            |
| Convertible debt discount                    | —                       | (58,060)   |
| Deferred sales commissions                   | (117,724)               | (76,562)   |
| Acquired intangibles                         | —                       | —          |
| Lease right of use assets                    | (7,045)                 | (8,997)    |
| Basis difference in investments              | —                       | (16,102)   |
| Property and equipment                       | (32,746)                | (20,935)   |
| Net deferred tax assets                      | \$ 1,233                | \$ 531     |

As of December 31, 2022, the Company has federal net operating loss carryforwards of approximately \$1.9 billion, of which approximately \$193.4 million expire between 2033 and 2037 and the remainder do not expire. As of December 31, 2022, the Company had state net operating loss carryforwards of approximately \$1.3 billion which will begin to expire in 2023. The Company also has research credit carryforwards for federal and California tax purposes of approximately \$63.2 million and \$41.0 million, respectively, available to reduce future income subject to income taxes. The federal research credit carryforwards will begin to expire in 2028 and the California research credits carry forward indefinitely.

The Internal Revenue Code of 1986, as amended, imposes restrictions on the utilization of net operating losses in the event of an "ownership change" of a corporation. Accordingly, a company's ability to use net operating losses may be limited as prescribed under Internal Revenue Code Section 382 ("IRC Section 382"). Events which may cause limitations in the amount of the net operating losses that the Company may use in any one year include, but are not limited to, a cumulative ownership change of more than 50% over a three-year period. Utilization of the federal and state net operating losses may be subject to substantial annual limitation due to the ownership change limitations provided by the IRC Section 382 and similar state provisions.

The Company's management believes that, based on a number of factors, it is more likely than not, that all or some portion of the deferred tax assets will not be realized; and accordingly, for the year ended December 31, 2022, the Company has provided a valuation allowance against the Company's U.S. net deferred tax assets. The net change in the valuation allowance for the years ended December 31, 2022 and 2021 was an increase of \$244.1 million and \$170.2 million, respectively.

The following shows the changes in the gross amount of unrecognized tax benefits as of December 31, 2022 (in thousands):

|  | 2022             | 2021             | 2020             |
|--|------------------|------------------|------------------|
| Unrecognized tax benefits, beginning of the year | \$ 20,010        | \$ 14,158        | \$ 8,965         |
| Increases related to prior year tax positions    | —                | —                | —                |
| Decreases related to prior year tax positions    | —                | —                | —                |
| Increases related to current year tax positions  | 6,402            | 5,852            | 5,193            |
| Unrecognized tax benefits, end of year           | <u>\$ 26,412</u> | <u>\$ 20,010</u> | <u>\$ 14,158</u> |

In accordance with ASC 740-10, *Income Taxes*, the Company has adopted the accounting policy that interest and penalties recognized are classified as part of its income taxes.

The Company does not anticipate that its total unrecognized tax benefits will significantly change due to settlement of examination or the expiration of statute of limitations during the next 12 months. Included in the balance of unrecognized tax benefits as of December 31, 2022 are \$0.3 million of tax benefit that, if recognized, would affect the effective tax rate. Otherwise, as a result of the full valuation allowance as of December 31, 2022, current adjustments to the unrecognized tax benefit will not have an impact on our effective income tax rate. Any adjustments made after the valuation allowance is released will have an impact on the tax rate.

The Company files U.S. and foreign income tax returns with varying statutes of limitations. Due to the Company's net carry-over of unused operating losses and tax credits, all years from 2003 forward remain subject to future examination by tax authorities.

**Note 12. Basic and Diluted Net Loss Per Share**

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by giving effect to all potential shares of common stock, stock options, restricted stock units, ESPP, convertible senior notes, and convertible preferred stock, to the extent dilutive. For the years ended December 31, 2022, 2021 and 2020, all such common stock equivalents have been excluded from diluted net loss per share as the effect to net loss per share would be anti-dilutive.

The following table sets forth the computation of the Company's basic and diluted net loss per share of common stock (in thousands, except per share data):

|   | Year Ended December 31, |                  |                  |
|---|-------------------------|------------------|------------------|
|   | 2022                    | 2021             | 2020             |
| <b>Numerator</b>  |                         |                  |                  |
| Net loss  | \$ (879,166)            | \$ (376,250)     | \$ (82,996)      |
| <b>Denominator</b>  |                         |                  |                  |
| Weighted-average common shares outstanding for basic and diluted net loss per share | 95,239                  | 91,738           | 88,684           |
| Basic net income (loss) per share   | <u>\$ (9.23)</u>        | <u>\$ (4.10)</u> | <u>\$ (0.94)</u> |

The following table summarizes the potentially dilutive common shares that were excluded from diluted weighted-average common shares outstanding because including them would have had an anti-dilutive effect (in thousands):

|  | Year Ended December 31, |              |              |
|--|-------------------------|--------------|--------------|
|  | 2022                    | 2021         | 2020         |
| Shares of common stock issuable under equity incentive plans outstanding | 4,050                   | 3,866        | 4,760        |
| Shares of common stock related to convertible preferred stock            | 743                     | 107          | —            |
| Shares of common stock related to convertible senior notes               | —                       | 135          | 1,669        |
| Potential common shares excluded from diluted net loss per share         | <u>4,793</u>            | <u>4,108</u> | <u>6,429</u> |

Under the terms of the respective Notes Indentures, effective January 1, 2022, the Company made an irrevocable election to settle the principal portion of the Notes only in cash, with the conversion premium to be settled in cash or shares.

Upon the adoption of ASU No. 2020-06 on January 1, 2022, the Company calculates the potential dilutive effect of its 2025 Notes and 2026 Notes under the if-converted method. Under this method, only the amounts settled in excess of the principal will be considered in diluted earnings per share, in line with the terms of the Notes Indentures.

The denominator for diluted net income per share does not include any effect from the capped call transactions the Company entered into concurrently with the issuance of the 2023, 2025, and 2026 Notes as this effect would be anti-dilutive. In the event of conversion of the Notes, if shares are delivered to the Company under the capped call, they will offset the dilutive effect of the shares that the Company would issue under the Notes.

#### Note 13. 401(k) Plan

The Company has a qualified defined contribution plan under Section 401(k) of the Internal Revenue Code covering eligible employees. Substantially all of the U.S. employees are eligible to make contributions to the 401(k) plan. The Company matches 401(k) based on the amount of the employees' contributions subject to certain limitations. Employer contributions were \$6.9 million, \$6.7 million, and \$5.4 million for the years ended December 31, 2022, 2021 and 2020.

#### Note 14. Related Party Transactions

In the ordinary course of business, the Company made purchases from Google Inc., at which one of the Company's directors previously served as President, Americas. Total payables to Google Inc. at December 31, 2022 and 2021 were \$1.9 million and \$3.0 million, respectively. Total expenses incurred from Google Inc. in 2022, 2021, and 2020 were \$24.3 million, \$24.7 million, and \$23.6 million, respectively.

#### Note 15. Restructuring Activities

On November 7, 2022, the Company's board of directors approved a reduction in force plan (the "Q4'22 Plan") as part of broader efforts to align the Company's cost base with its strategic priorities in the current environment. The Q4'22 Plan is expected to reduce the Company's full-time employees by approximately 10%, primarily consisting of severance payments, employee benefits and related costs. The Company expects to incur aggregate restructuring costs associated with the Q4'22 Plan of approximately \$15.5 million, of which approximately \$10.2 million was recognized through December 31, 2022. Prior to approval of the Q4'22 Plan, the Company incurred approximately \$8.0 million of restructuring costs for the year ended December 31, 2022 in connection with the Company's strategy to optimize its cost structure and improve its operational efficiencies, which were substantially completed as of December 31, 2022. The Company estimates the remaining costs of approximately \$5.5 million associated with the Q4'22 Plan to be substantially complete by the first quarter of 2023, subject to local law and consultation requirements, which may extend the process beyond the first quarter of 2023 in certain countries.

The following table summarizes the Company's restructuring costs that were recorded as an operating expense in the accompanying Consolidated Statement of Operations for the year ended December 31, 2022 (in thousands):

|                            |    |               |
|----------------------------|----|---------------|
| Cost of revenues           | \$ | 457           |
| Research and development   |    | 5,321         |
| Sales and marketing        |    | 9,695         |
| General and administrative |    | 2,711         |
| Total restructuring costs  | \$ | <u>18,184</u> |

The following table summarizes the Company's restructuring liability that is included in accrued liabilities in the accompanying Consolidated Balance Sheets (in thousands):

|                                 |    |              |
|---------------------------------|----|--------------|
| Balance as of December 31, 2021 | \$ | —            |
| Restructuring costs             |    | 18,184       |
| Cash payments                   |    | (12,699)     |
| Balance as of December 31, 2022 | \$ | <u>5,485</u> |

**Note 16. Subsequent Events**

***Share Repurchase Program***

On February 13, 2023, the Company's board of directors authorized a share repurchase program under which it may repurchase up to \$175 million of the Company's outstanding shares of Class A Common Stock. Under the program, share repurchases may be made at the Company's discretion from time to time in open market transactions, privately negotiated transactions, or other means, subject to a minimum cash balance. The program does not obligate the Company to repurchase any specific dollar amount or to acquire any specific number of shares of its Class A Common Stock. The timing and number of any shares repurchased under the program will depend on a variety of factors, including stock price, trading volume, and general business and market conditions. The authorization is effective until December 31, 2023.

***Credit Agreement***

On February 14, 2023, the Company entered into a Credit Agreement (the "Credit Agreement"), among the Company, the lenders from time to time party thereto and Bank of America, N.A., as administrative agent (in such capacity, the "Administrative Agent") and as collateral agent (in such capacity, the "Collateral Agent"). The Credit Agreement provides for a \$200.0 million revolving loan facility (the "Revolving Facility"), with a \$25.0 million sublimit for the issuance of letters of credit, and a \$400.0 million delayed draw term loan facility (the "Term Facility"). The obligations under the Credit Agreement and the other loan documents are guaranteed by certain material domestic subsidiaries of the Company, and secured by substantially all of the personal property of the Company and such subsidiary guarantors. As of the date of this filing, no loans or letters of credit were outstanding under the Credit Agreement.

The proceeds of the loans under the Revolving Facility may be used for working capital and general corporate purposes. To the extent drawn, the proceeds of the loans under the Term Facility must be used to repurchase, repay, acquire or otherwise settle a portion of the 2025 Notes and/or the 2026 Notes.



## **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**

Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as of the end of the period covered by this Annual Report on Form 10-K.

In designing and evaluating our disclosure controls and procedures, management recognizes that any disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on management’s evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures are designed to, and are effective to, provide assurance at a reasonable level that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosures.

#### **Management’s Annual Report on Internal Controls Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f). Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022 based on the guidelines established in the *Internal Control—Integrated Framework* (2013 framework) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Our internal control over financial reporting includes policies and procedures that provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

The effectiveness of our internal control over financial reporting as of December 31, 2022 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in its report which is included in Item 8 in this Annual Report on Form 10-K.

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

There are no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2022, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **Inherent Limitations on Effectiveness of Controls**

Our management, including our chief executive officer and chief financial officer, do not expect that our disclosure controls or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will

succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

**ITEM 9B. OTHER INFORMATION**

On February 18, 2023, Sridhar Srinivasan notified the Company that he was resigning from the Company's board of directors, effective immediately. Mr. Srinivasan confirmed that his resignation was not the result of any disagreement with the Company or management on any matter relating to the Company's operations, policies or practices.

**ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

None.

## PART III

## ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

## Composition of the Board of Directors

We manage our business affairs under the direction of our board of directors, which is currently composed of eight members. Seven of our directors are independent within the meaning of the applicable rules of the New York Stock Exchange (“NYSE”). Each director’s term continues until the election and qualification of such director’s successor, or such director’s earlier death, resignation, or removal.

The names, ages, and certain other information as of December 31, 2022 for each current director are set forth below.

| Nominees                          | Age | Position                             | Director Since |
|-----------------------------------|-----|--------------------------------------|----------------|
| Vladimir Shmunis                  | 62  | Chairman and Chief Executive Officer | 1999           |
| Mignon Clyburn                    | 60  | Director                             | 2020           |
| Arne Duncan                       | 58  | Director                             | 2021           |
| Kenneth Goldman <sup>(1)(2)</sup> | 73  | Director                             | 2017           |
| Tarek Robbiati <sup>(1)(3)</sup>  | 57  | Director                             | 2022           |
| Robert Theis <sup>(1)(2)(3)</sup> | 61  | Director                             | 2011           |
| Allan Thygesen <sup>(3)</sup>     | 60  | Director                             | 2015           |
| Neil Williams <sup>(1)</sup>      | 69  | Director                             | 2012           |

(1) Member of the audit committee

(2) Member of the nominating and corporate governance committee

(3) Member of the compensation committee

*Vladimir Shmunis* is one of our co-founders and has served as our Chief Executive Officer, or CEO, and Chairman since our inception in 1999. Prior to RingCentral, from 1992 to 1998, Mr. Shmunis served as President and Chief Executive Officer of Ring Zero Systems, Inc., a desktop communications software provider founded by Mr. Shmunis and acquired by Motorola, Inc. From 1982 to 1992, Mr. Shmunis held various software development and management roles with a number of Silicon Valley companies, including Convergent Technologies, Inc. and Ampex Corporation. Mr. Shmunis holds a B.S. in Computer Science and an M.S. in Computer Science from San Francisco State University.

Our board of directors believes that Mr. Shmunis possesses specific attributes that qualify him to serve as a director, including the perspective and experience he brings as our CEO and his experience as an executive in the technology industry. Our board of directors also believes that he brings historical knowledge, operational expertise and continuity to the board of directors.

*Mignon Clyburn* has served on our board of directors since November 2020. Ms. Clyburn has served as President of MLC Strategies, LLC, a Washington, D.C.-based consulting firm, since January 2019, and previously served as a Fellow at Open Society Foundations, a philanthropic organization, from June 2018 to January 2019. Prior to this, Ms. Clyburn served as a Commissioner of the U.S. Federal Communications Commission (the “FCC”) from August 2009 to June 2018, including as acting chair. While at the FCC, she was committed to closing the digital divide and championed the modernization of the agency’s Lifeline Program, which assists low-income consumers with voice and broadband service. In addition, Ms. Clyburn promoted diversity in media ownership, initiated Inmate Calling Services reforms, supported inclusion in STEM opportunities and fought for an Open Internet. Prior to her federal appointment, Ms. Clyburn served 11 years on the Public Service Commission of South Carolina and worked for nearly 15 years as publisher of the Coastal Times, a Charleston weekly newspaper focused on the African American community. Ms. Clyburn has served as a member of the board of directors of Charah Solutions, Inc., a provider of environmental and maintenance services to the power generation industry, since March 2019, and as a member of the board of directors of Lions Gate Entertainment Corp., an entertainment company, since September 2020. Ms. Clyburn holds a B.S. in Banking, Finance and Economics from the University of South Carolina.

Our board of directors believes that Ms. Clyburn possesses specific attributes that qualify her to serve as a director, including her experience as a regulator of public utilities and as a federal commissioner in the telecommunications sector.

*Arne Duncan* has served on our board of directors since February 2021. Mr. Duncan served as a member of the board of directors of Pluralsight, Inc. from December 2017 to April 2021 and as a member of the board of managers of Pluralsight Holdings from June 2016 to April 2021. Since March 2016, Arne has both served as a managing partner of Emerson Collective and also led ChicagoCRED, a nonprofit focused on reducing gun violence in his hometown. Mr. Duncan previously served as the U.S. Secretary of Education from January 2009 to December 2015. Mr. Duncan currently serves on the board of directors of several private companies. Mr. Duncan holds a B.A. degree in Sociology from Harvard University.

Our board of directors believes that Mr. Duncan possesses specific attributes that qualify him to serve as a director, including his professional experience in the public education sector.

*Kenneth Goldman* has served on our board of directors since June 2017. Between March 2018 and April 2022, Mr. Goldman served as President of Hillspire LLC, a wealth management services provider, where he also previously served as a contractor from September 2017 to March 2018. From October 2012 to June 2017, Mr. Goldman served as the Chief Financial Officer of Yahoo! Inc., an Internet commerce website, where he was responsible for Yahoo's global finance functions including financial planning and analysis, controllership, tax, treasury and investor relations. From September 2007 to October 2012, Mr. Goldman was the Senior Vice President, Finance and Administration and Chief Financial Officer of Fortinet Inc., a provider of threat management technologies. From August 2000 until March 2006, Mr. Goldman served as Senior Vice President of Finance and Administration and Chief Financial Officer of Siebel Systems, Inc., a supplier of customer software solutions and services. Previously, Mr. Goldman has been the Chief Financial Officer of Sybase, Inc., an enterprise software and services company (acquired by SAP SE), Excite@Home, an internet access provider, Cypress Semiconductor Corporation, a semiconductor company, and VLSI Technology, Inc., an integrated circuit designer and manufacturer (acquired by Philips Electronics). Mr. Goldman currently serves on the board of directors of GoPro, Inc., a technology company, Zuora Inc., a subscription software company and Fortinet, Inc., a cybersecurity company, and previously served on the boards of directors of NXP Semiconductor N.V., a global semiconductor manufacturer, from August 2010 to June 2022, and TriNet Group, Inc., a human resources management company, from August 2009 to July 2020. He also is a Trustee Emeritus of Cornell University. Mr. Goldman also currently serves on the board of directors of several private companies. From December 1999 to December 2003, Mr. Goldman served on the Financial Accounting Standards Board's primary Advisory Council ("FASAC"). Between July 2018 and August 2022, Mr. Goldman served on the Sustainability Accounting Standards Board, now a part of The Value Reporting Foundation, and previously served a three-year term on the Public Company Accounting Oversight Board's Standing Advisory Group ("SAG"). Mr. Goldman holds a B.S. in Electrical Engineering from Cornell University and an M.B.A. from Harvard Business School.

Our board of directors believes that Mr. Goldman is qualified to serve as a member of the board of directors based on his experience on the boards of directors of numerous companies, his extensive executive experience and his service as a member of FASAC and SAG. He provides a high level of expertise and significant leadership experience in the areas of finance, accounting and audit oversight.

*Tarek Robbiati* has served on our board of directors since December 2022. Mr. Robbiati has served as Executive Vice President, Chief Financial Officer of Hewlett Packard Enterprise Co. since September 2018. Before joining Hewlett Packard Enterprise, Mr. Robbiati served as Chief Financial Officer of Sprint Corporation from August 2015 to February 2018. Prior to that, Mr. Robbiati served as Chief Executive Officer and Managing Director of FlexiGroup Limited in Australia from January 2013 to August 2015. He previously served as Group Managing Director and President of Telstra International Group in Hong Kong and Executive Chairman of Hong Kong CSL Limited from December 2009 to December 2012, and as Chief Executive Officer of Hong Kong CSL Limited from July 2007 to May 2010. He holds a Baccalaureat C, Terminale C from Lycée Chateaubriand Rome, a Master of Science Nuclear Physics and Electronics from École nationale supérieure d'ingénieurs de Caen (ENSICAEN), a Master of Science Business Administration from IAE Caen and a Master of Business Administration from the London Business School.

Our board of directors believes that Mr. Robbiati possesses specific attributes that qualify him to serve as a director, including his business and financial expertise and his experience as a chief financial officer.

*Robert Theis* has served on our board of directors since August 2011. Mr. Theis has served as a General Partner of World Innovation Lab, a venture capital firm, since September 2016. He served as a managing director at Scale Venture Partners, a venture capital firm, from May 2008 to October 2014. Prior to joining Scale Ventures, from July 2000 to April 2008, Mr. Theis served as a general partner with Doll Capital Management, a venture capital firm. From July 1996 to June 2000, Mr. Theis served as executive vice president and served on the board of directors of New Era of Networks, Inc., a supplier of Internet infrastructure software and services. From April 1986 to June 1996, Mr. Theis served as a Managing Director at Sun Microsystems, Inc., a provider of computers and computer components acquired by Oracle Corporation, and from January 1984 to March 1986, as Marketing Manager at Silicon Graphics, Inc., a provider of high-performance computing solutions. Mr. Theis

also served on the board of directors of Avaya Holdings Corp., a business communication and cloud solutions company, from November 2020 to October 2022. Mr. Theis holds a B.A. in Economics from the University of Pittsburgh, Pennsylvania.

Our board of directors believes that Mr. Theis possesses specific attributes that qualify him to serve as a director, including his substantial experience as a venture capitalist investment professional and as a director of technology infrastructure and applications companies.

*Allan Thygesen* has served on our board of directors since October 2015. Mr. Thygesen has served since October 2022 as Chief Executive Officer of DocuSign, Inc., an eSignature and digital transaction management company. Previously, Mr. Thygesen served from February 2017 to October 2022 as President, Americas at Google Inc. (a subsidiary of Alphabet Inc.) and from September 2011 to February 2017 as Vice President, Global SMB Sales and Operations. He is also a lecturer at the Stanford Graduate School of Business. Before joining Google, Mr. Thygesen consulted to Google and other companies in 2010 and until September 2011 and previously co-founded an early stage venture firm and was a managing director and partner in the U.S. venture and growth funds of The Carlyle Group, where he led investments in startups in sectors including e-commerce, mobile advertising and imaging. Earlier, Mr. Thygesen served as an executive in several public and private companies, including Wink Communications, Inc., an interactive television technology company, which he helped take public in 1999. Mr. Thygesen has served on the board of directors of DocuSign, Inc. since October 2022, and has also served on the boards of directors of various private companies. Mr. Thygesen holds an M.Sc. in Economics from the University of Copenhagen and an M.B.A. from Stanford University.

Our board of directors believes that Mr. Thygesen possesses specific attributes that qualify him to serve as a director, including his professional experience in the areas of advertising, scaling operations and market strategies.

*Neil Williams* has served on our board of directors since March 2012. From January 2008 to February 2018, Mr. Williams served as Executive Vice President and Chief Financial Officer at Intuit Inc., a business and financial software company. Prior to joining Intuit, from April 2001 to September 2007, Mr. Williams served as Executive Vice President of Visa U.S.A., Inc., a credit and debit card payment network, and from November 2004 to September 2007, he served as Chief Financial Officer. During the same period, Mr. Williams held the dual role of Chief Financial Officer for Inovant LLC, Visa's global IT organization. Mr. Williams has served on the board of directors of Oportun Financial Corporation, a financial services provider, since November 2017 and previously served on the board of directors and as chair of the audit committee of Amyris, Inc., an integrated renewable products company, from May 2013 to March 2020. Mr. Williams holds a B.A. in Business Administration from the University of Southern Mississippi and is a certified public accountant.

Our board of directors believes that Mr. Williams possesses specific attributes that qualify him to serve as a director, including his professional experience in the areas of finance, accounting and audit oversight.

## Executive Officers

The following table sets forth the names, ages and positions of our executive officers as of December 31, 2022:

| <b>Name</b>      | <b>Age</b> | <b>Position</b>   |
|------------------|------------|---|
| Vladimir Shmunis | 62         | Chief Executive Officer and Chairman  |
| Mo Katibeh       | 44         | President and Chief Operating Officer   |
| Sonalee Parekh   | 49         | Chief Financial Officer   |
| John Marlow      | 54         | Chief Administrative Officer, Senior Vice President, Corporate Development, General Counsel and Secretary |

*Vladimir Shmunis, Chief Executive Officer and Chairman.* For a biography of Mr. Shmunis please see the above section entitled "Composition of the Board of Directors."

*Mo Katibeh* has served as our President and Chief Operating Officer since January 2022. Over the past twenty years, Mr. Katibeh has served in multiple leadership roles at AT&T, a multinational telecommunications company. Most recently, he served as Head of AT&T Network Infrastructure & Build from April 2021 to January 2022; Executive Vice President Chief Product & Platform Officer from July 2020 to April 2021; Executive Vice President Chief Marketing Officer from August 2017 to July 2020; Senior Vice President – Advanced Solutions from May 2016 to July 2017; and Vice President – Global Technology Planning from March 2014 to May 2016. Mr. Katibeh holds a B.S. in Business with Majors in International

Business Marketing and Philosophy from Oklahoma State University and an Executive M.B.A. from The University of Texas at Dallas – School of Management.

*Sonalee Parekh* has served as our Chief Financial Officer since May 2022. Ms. Parekh previously served as the Senior Vice President of Corporate Development and Investor Relations at Hewlett Packard Enterprise, a Fortune 500 technology company, from September 2019 to April 2022, where she oversaw critical growth initiatives, including the M&A strategy globally, and was responsible for corporate strategy, mergers and acquisitions, strategic investments, business integration and performance management. In her role as Senior Vice President of Investor Relations, Ms. Parekh worked directly with many of the world’s largest institutional investors and asset managers and led HPE’s socially responsible investing strategy. Prior to HPE, Ms. Parekh held senior leadership roles at several global investment banks, including Goldman Sachs and Barclays Capital. Ms. Parekh currently serves as a director and chair of the audit committee for Indie Semiconductor and Ms. Parekh is also currently serving as the chair of the compensation committee for PWP Forward Acquisition Corp. I. Ms. Parekh earned a Bachelor of Commerce degree from McGill University and is a Chartered Accountant and alumna of PricewaterhouseCoopers.

*John Marlow* has served as our Chief Administrative Officer since February 2017, as our Senior Vice President, Corporate Development since June 2013 and as our General Counsel and Secretary since April 2009, and also served as our Managing Director—EMEA from January 2015 to June 2016. He was appointed as Vice President of Corporate Development in November 2008. Mr. Marlow also served on our board of directors from August 2005 until August 2011. In addition, Mr. Marlow serves as the Director of Business and Legal Affairs at BrainSonix Corporation, a private medical device company. Mr. Marlow holds a B.A. in Sociology from Colgate University and a J.D. from the University of California (Berkeley) School of Law.

### **Director Independence**

Under the rules of the NYSE, independent directors must comprise a majority of a listed company’s board of directors within a specified period of the completion of its initial public offering. In addition, the rules of the NYSE require that, subject to specified exceptions, each member of a listed company’s audit, compensation and nominating and corporate governance committees be independent. Under the rules of the NYSE, a director is independent only if our board of directors makes an affirmative determination that the director has no material relationship with us.

Our board of directors undertook a review of its composition, the composition of its committees and the independence of each director. The determination of our board of directors was based upon information requested from and provided by each director concerning his or her background, employment and affiliations, including family relationships. In making this determination, our board of directors considered the relationships that each non-employee director has with us and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director.

With respect to Mr. Thygesen, our board of directors specifically considered that Mr. Thygesen previously served as president, Americas at Google Inc. (though he was not an executive officer at Google Inc. or its parent company, Alphabet Inc.) and the terms and value of the search engine optimization/search engine marketing agreement we have with Google Inc. as well as the suite of Google apps and services that we license from Google Inc. In addition, our board of directors has specifically considered that Mr. Thygesen is Chief Executive Officer of DocuSign, Inc., a vendor of the Company. Our board of directors has concluded that our relationships with Google Inc. and DocuSign, Inc. would not impede the exercise of independent judgment by Mr. Thygesen.

Our board of directors has determined that all of the members of our board of directors, except our CEO, Mr. Shmunis, are “independent” as defined in the applicable NYSE rules and applicable rules and regulations of the SEC.

### **Leadership Structure**

Mr. Shmunis currently serves as both Chairman of our board of directors and CEO. Our board of directors believes that the current board leadership structure, coupled with a strong emphasis on board independence, provides effective independent oversight of management while allowing the board and management to benefit from Mr. Shmunis’s leadership, Company specific experience and years of experience as an executive in the technology industry. Serving on our board of directors and as CEO since our founding in 1999, Mr. Shmunis is best positioned to identify strategic priorities, lead critical discussion and execute our strategy and business plans. Mr. Shmunis possesses detailed in-depth knowledge of the issues, opportunities and challenges facing us. Independent directors and management sometimes have different perspectives and roles in strategy development. Our independent directors bring experience, oversight and expertise from outside of our Company, while the CEO brings Company specific experience and expertise. The board of directors believes that Mr. Shmunis’s

combined role enables strong leadership, creates clear accountability and enhances our ability to communicate our message and strategy clearly and consistently to stockholders.

### **Lead Independent Director**

Our corporate governance guidelines provide that one of our independent directors should serve as a lead independent director at any time when the Chairman is not independent. Because our CEO, Mr. Shmunis, is our Chairman, our board of directors appointed Mr. Theis to serve as our lead independent director. Our lead independent director presides over periodic meetings of our independent directors, serves as a liaison between our Chairman and the independent directors and performed such additional duties as our board of directors otherwise determines and delegates from time to time.

### **Board Committees**

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee. Our board of directors may establish other committees from time to time. The charters for each of our committees are available on our website at [ir.ringcentral.com](http://ir.ringcentral.com).

#### ***Audit Committee***

Our audit committee oversees our accounting and financial reporting process and the audit of our financial statements and assists our board of directors in monitoring our financial systems and our legal and regulatory compliance. Our audit committee is responsible for, among other things:

- appointing, approving the compensation of, supervising, evaluating and assessing the independence of our independent registered public accounting firm;
- pre-approving auditing and permissible non-audit services, and the terms of such services, to be provided by our independent registered public accounting firm;
- reviewing annually a report by the independent registered public accounting firm regarding the independent registered public accounting firm's internal quality control procedures and various issues relating thereto;
- reviewing and discussing with management and the independent registered public accounting firm our annual and quarterly financial statements and related disclosures;
- coordinating the oversight and reviewing the adequacy of our internal control over financial reporting with both management and the independent registered public accounting firm;
- establishing policies and procedures for the receipt and retention of accounting related complaints and concerns, including a confidential, anonymous mechanism for the submission of concerns by employees;
- periodically reviewing legal compliance matters, including securities trading policies, periodically reviewing significant accounting and other financial risks or exposures to our Company and reviewing and, if appropriate, approving all transactions between our Company or its subsidiaries and any related party (as described in Item 404 of Regulation S-K);
- periodically reviewing our Code of Business Conduct and Ethics;
- establishing policies for the hiring of employees and former employees of the independent registered public accounting firm; and
- reviewing the audit committee report required by SEC rules to be included in our annual proxy statement.

The audit committee has the power to investigate any matter brought to its attention within the scope of its duties and the authority to retain counsel and advisors to fulfill its responsibilities and duties.

Our audit committee is currently comprised of Kenneth Goldman, Tarek Robbiati, Rob Theis and Neil Williams, who is the chairperson of the committee. Our board of directors has designated Kenneth Goldman, Tarek Robbiati, Rob Theis and

Neil Williams as “audit committee financial experts,” as defined under the rules of the SEC implementing Section 407 of the Sarbanes Oxley Act of 2002.

Our board of directors has considered the independence and other characteristics of each member of our audit committee and has concluded that the composition of our audit committee meets the requirements for independence under the current requirements of the NYSE and SEC rules and regulations. Audit committee members must satisfy additional independence criteria set forth under Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). In order to be considered independent for purposes of the Rule 10A-3, an audit committee member may not, other than in his or her capacity as a member of the audit committee, accept consulting, advisory or other fees from us or be an affiliated person of us. Each of the members of our audit committee qualifies as an independent director pursuant to Rule 10A-3.

No member of our audit committee should simultaneously serve on the audit committee of more than two additional public companies unless our board of directors determines that such simultaneous service would not impair the ability of such member to effectively serve on the audit committee and discloses such determination in accordance with the requirements of the NYSE. Our board of directors has considered Mr. Goldman’s simultaneous service on the audit committees of RingCentral and three other public companies and has determined that such simultaneous service does not impair his ability to effectively serve as a member of our audit committee.

#### ***Compensation Committee***

Our compensation committee oversees our compensation policies, plans and programs. The compensation committee is responsible for, among other things:

- reviewing and recommending policies, plans and programs relating to compensation and benefits of our directors, officers and employees;
- annually reviewing and approving corporate goals and objectives relevant to compensation of our chief executive officer and other executive officers;
- annually evaluating the performance of our chief executive officer in light of such corporate goals and objectives and recommending the compensation of our chief executive officer and our other executive officers to the board of directors for its approval;
- administering our equity compensations plans for our employees and directors; and
- reviewing for inclusion in this Form 10-K the report of the compensation committee required by the SEC.

The compensation committee also has the power to investigate any matter brought to its attention within the scope of its duties and the authority to retain counsel and advisors to fulfill its responsibilities and duties.

Our compensation committee is currently comprised of Tarek Robbiati, Robert Theis and Allan Thygesen , who is the chairperson of the committee. Our board of directors has determined that each member of the compensation committee is an independent director for compensation committee purposes as that term is defined in the applicable rules of the NYSE and is a “non-employee director” within the meaning of Rule 16b-3(d)(3) promulgated under the Exchange Act.

#### ***Nominating and Corporate Governance Committee***

Our nominating and corporate governance committee, or nominating committee, oversees and assists our board of directors in reviewing and recommending corporate governance policies and nominees for election to our board of directors and its committees. The nominating committee is responsible for, among other things:

- evaluating and making recommendations regarding the organization and governance of our board of directors and its committees and changes to our certificate of incorporation and bylaws and stockholder communications;
- reviewing succession planning for our chief executive officer and other executive officers and evaluating potential successors;
- assessing the performance of board members and making recommendations regarding committee and chair assignments and composition and size of our board of directors and its committees;



- recommending desired qualifications for board and committee membership and conducting searches for potential members of our board of directors;
- evaluating and making recommendations regarding the creation of additional committees or the change in mandate or dissolution of committees;
- reviewing and making recommendations with regard to our corporate governance guidelines and compliance with laws and regulations; and
- reviewing and approving conflicts of interest of our directors and corporate officers, other than related party transactions reviewed by the audit committee.

The nominating committee also has the power to investigate any matter brought to its attention within the scope of its duties. It also has the authority to retain counsel and advisors to fulfill its responsibilities and duties.

Our nominating committee is currently comprised of Robert Theis and Kenneth Goldman, who is the chairperson of the committee. Each of the nominating committee members is an independent director for nominating committee purposes as that term is defined in the applicable rules of the NYSE.

#### **Considerations in Evaluating Director Nominees**

The nominating committee uses a variety of methods for identifying and evaluating director nominees. In its evaluation of director candidates, the nominating committee will consider the current size and composition of the board of directors and the needs of the board of directors and the respective committees of the board of directors. Some of the qualifications that the nominating committee considers include, without limitation, issues of character, integrity, judgment, diversity (with respect to diversity, such factors as gender, gender identity, sexual orientation, race, ethnicity, differences in professional background, education, skill and other individual qualities and attributes that contribute to the total mix of viewpoints and experience represented on the board of directors), independence, area of expertise, corporate experience, length of service, potential conflicts of interest and other commitments. The nominating committee requires the following minimum qualifications to be satisfied by any nominee for a position on our board of directors, (1) the highest personal and professional ethics and integrity, (2) proven achievement and competence in the nominee's field and the ability to exercise sound business judgment, (3) skills that are complementary to those of the existing members of our board of directors, (4) the ability to assist and support management and make significant contributions to the Company's success, and (5) an understanding of the fiduciary responsibilities that are required of a member of our board of directors, and the commitment of time and energy necessary to diligently carry out those responsibilities. Other than the foregoing, there are no stated minimum criteria for director nominees, although the nominating committee may also consider such other factors as it may deem, from time to time, are in our and our stockholders' best interests. The nominating committee may also take such measures that it considers appropriate in connection with its evaluation of a director candidate, including candidate interviews, inquiry of the person or persons making the recommendation or nomination, engagement of an outside search firm to gather additional information, or reliance on the knowledge of the members of the nominating committee, the board of directors or management.

Although the board of directors does not maintain a specific policy with respect to board diversity, the board of directors believes that the board should be a diverse body and is committed to increasing board diversity. Accordingly, the nominating committee considers a broad range of backgrounds, experiences and other factors as it oversees the annual board of director and committee evaluations. After completing its review and evaluation of director candidates, the nominating committee recommends to the full board of directors the director nominees for selection.

#### **Stockholder Recommendations for Nominations to the Board of Directors**

The nominating committee will consider candidates for director recommended by stockholders holding at least one percent (1%) of the fully diluted capitalization of the Company continuously for at least twelve (12) months prior to the date of the submission of the recommendation, so long as such recommendations comply with the certificate of incorporation and bylaws of our Company and applicable laws, rules and regulations, including those promulgated by the SEC. The committee will evaluate such recommendations in accordance with its charter, our bylaws, our policies and procedures for director candidates, as well as the regular nominee criteria described above. This process is designed to ensure that the board of directors includes members with diverse backgrounds, skills and experience, including appropriate financial and other expertise relevant to our business. Eligible stockholders wishing to recommend a candidate for nomination should contact our General Counsel or our Legal Department in writing. Such recommendations must include the information about the candidate, relevant qualifications, a signed letter from the candidate confirming willingness to serve, a statement of support by the recommending

stockholder, information regarding any relationships between the candidate and the Company and evidence of the recommending stockholder's ownership of Company stock. The committee has discretion to decide which individuals to recommend for nomination as directors.

### **Corporate Governance Guidelines and Code of Business Conduct and Ethics**

We have adopted Corporate Governance Guidelines that address items such as the qualifications and responsibilities of our directors and director candidates and corporate governance policies and standards applicable to us in general. In addition, we have adopted a Code of Business Conduct and Ethics that is applicable to all of our employees, officers and directors, including our chief executive and senior financial officers. The Corporate Governance Guidelines and Code of Business Conduct and Ethics are available on our website at [ir.ringcentral.com](http://ir.ringcentral.com). We expect that any amendment to the Code of Business Conduct and Ethics, or any waivers of its requirements, will be disclosed on our website.

### **Risk Management**

Risk is inherent with every business, and we face a number of risks, including strategic, financial, business and operational, legal and compliance, and reputational. We have designed and implemented processes to manage risk in our operations. Management is responsible for the day-to-day management of risks the Company faces, while our board of directors, as a whole and assisted by its committees, has responsibility for the oversight of risk management. In its risk oversight role, our board of directors has the responsibility to satisfy itself that the risk management processes designed and implemented by management are appropriate and functioning as designed.

Our board of directors believes that open communication between management and the board of directors is essential for effective risk management and oversight. Our board of directors meets with members of the senior management team at regular board meetings, where, among other topics, they discuss strategy and risks facing the Company.

While our board of directors is ultimately responsible for risk oversight, our board committees assist the board of directors in fulfilling its oversight responsibilities in certain areas of risk. The audit committee assists our board of directors in fulfilling its oversight responsibilities with respect to risk management in the areas of significant accounting and other financial risk exposure, and discusses with management and the independent auditor guidelines and policies with respect to risk assessment and risk management. The audit committee also reviews management's assessment of the key risks facing us, including the key controls it relies on to mitigate those risks. The audit committee also monitors certain key risks at each of its regularly scheduled meetings, such as risk associated with internal control over financial reporting, liquidity risk, legal and regulatory compliance, data privacy, security (including cybersecurity) and enterprise-level risk assessment and management. The nominating committee assists our board of directors in fulfilling its oversight responsibilities with respect to the management of risk associated with board organization, membership and structure, and corporate governance, as well as risks attributable to environmental, social, and governance (ESG) policies and other programs supporting the sustainable growth of the business. The compensation committee assesses risks created by the incentives inherent in our compensation philosophy and practices. Finally, the full board of directors reviews strategic and operational risk in the context of reports from the management team, receives reports on all significant committee activities at each regular meeting, and evaluates the risks inherent in significant transactions.

### **Compensation Committee Interlocks and Insider Participation**

None of the members of our compensation committee is an officer or employee of our Company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

### **Non-Employee Director Compensation**

Our board of directors has approved a compensation program for non-employee directors to attract, retain and reward its qualified directors and align the financial interests of the non-employee directors with those of our stockholders.

The compensation committee has the primary responsibility for reviewing and approving the compensation paid to non-employee directors. The compensation committee reviews at least annually the type and form of compensation paid to our non-employee directors, which includes a market assessment and analysis by our independent compensation consulting firm, Compensia, Inc. ("Compensia") regarding practices at comparable companies. As part of this analysis, Compensia reviews non-employee director compensation trends and data from companies comprising the same executive compensation peer group used by the compensation committee in connection with its review of executive compensation. Based on this review, the

compensation committee has made adjustments to the non-employee director compensation program, most recently in July 2021, in an effort to provide competitive compensation opportunities for our non-employee directors.

Pursuant to this compensation program, each non-employee director receives cash and equity compensation for board services as described below. In addition, we reimburse our non-employee directors for expenses incurred in connection with attending board and committee meetings as well as continuing director education.

### ***Cash Compensation***

Our non-employee directors are entitled to receive the following cash compensation for their services:

- \$50,000 per year for service as a board member;
- \$30,000 per year for service as lead independent director;
- \$30,000 per year for service as chair of the audit committee;
- \$20,000 per year for service as chair of the compensation committee;
- \$15,000 per year for service as chair of the nominating committee;
- \$12,500 per year for service as member of the audit committee;
- \$10,000 per year for service as member of the compensation committee; and
- \$5,000 per year for service as member of the nominating committee.

All cash payments to non-employee directors are paid quarterly in arrears.

From time to time, non-employee directors may also be compensated, generally in cash, for serving on a special or sub-committee of the Board.

### ***Equity Compensation***

Our non-employee directors are entitled to receive the following equity compensation:

On the first trading day on or after June 1 of each year, each non-employee director will be granted an award RSUs having an award value (as determined based on the fair value of the award on the date of grant) of \$300,000, which award will vest in full on the date that is the earlier of: (i) the next annual meeting of stockholders and (ii) one year from the date of grant, subject to the non-employee director continuing to be a service provider through such vesting date.

In addition, each person who becomes a non-employee director will receive an award of RSUs having an award value (as determined based on the fair value of the award on the date of grant) equal to (i) \$600,000 multiplied by (ii) a fraction, the numerator of which is the number of months between the date the non-employee director becomes a member of the board and the first trading day on or after June 1 following such date and the denominator of which is 12. The date of grant for this award will be the date the non-employee director joins the board, or, if such date occurs during a Company blackout period, the fifth trading day following the expiration of such Company blackout period and any special blackout period in effect, subject to the director remaining on the board through the grant date. This grant will vest in full on the date that is one year from the date of grant, subject to the non-employee director continuing to be a service provider through such vesting date.

In the event of a change in control, 100% of the non-employee director's outstanding and unvested equity awards will immediately vest and, if applicable, become exercisable. In no event will an award granted under the policy be greater than the non-employee director limits set forth in our 2013 Plan.

The following table shows, for the fiscal year ended December 31, 2022, certain information with respect to the compensation of all of our non-employee directors.

| Name                   | Fees Earned or Paid in Cash (\$) | Stock Awards \$(1) | All Other Compensation \$(2) | Total (\$) |
|------------------------|----------------------------------|--------------------|------------------------------|------------|
| Mignon Clyburn (3)     | 50,000                           | 299,938            | —                            | 349,938    |
| Arne Duncan (4)        | 50,000                           | 299,938            | —                            | 349,938    |
| Kenneth Goldman (5)    | 77,500                           | 299,938            | —                            | 377,438    |
| Michelle McKenna (6)   | 77,500                           | 299,938            | —                            | 377,438    |
| Tarek Robbiati (7)     | 2,856                            | —                  | —                            | 2,856      |
| Sridhar Srinivasan (8) | —                                | —                  | —                            | —          |
| Robert Theis (9)       | 104,140                          | 299,938            | 100,000                      | 504,078    |
| Allen Thygesen (10)    | 60,914                           | 299,938            | —                            | 360,852    |
| Neil Williams (11)     | 80,000                           | 299,938            | —                            | 379,938    |

- (1) The amounts listed in the “Stock Awards” column represent the aggregate fair market value of RSUs granted in the fiscal year ended December 31, 2022 and calculated in accordance with FASB ASC Topic 718 (“ASC Topic 718”). See Note 10 of the notes to the consolidated financial statements included in Part II, Item 8 for a discussion of assumptions made in determining the grant date fair market value.
- (2) In connection with our strategic partnership with Avaya, we are entitled to nominate one person to Avaya’s board of directors. Mr. Theis served on Avaya’s board of directors as our nominee through October 20, 2022, and we paid him \$120,000 per year in cash for such board service. The amount listed in this column represents the pro-rated amount for such service in 2022.
- (3) As of December 31, 2022, Ms. Clyburn held 4,770 RSUs, of which 4,770 shares of our Class A Common Stock underlying the RSUs vest on the earlier of (a) the date of the annual meeting of stockholders for 2023 (the “2023 Annual Meeting”) or (b) June 1, 2023, subject to her continued service with us.
- (4) As of December 31, 2022, Mr. Duncan held 4,770 RSUs, of which 4,770 shares of our Class A Common Stock underlying the RSUs vest on the earlier of (a) the date of the 2023 Annual Meeting or (b) June 1, 2023, subject to his continued service with us.
- (5) As of December 31, 2022, Mr. Goldman held 4,770 RSUs, of which 4,770 shares of our Class A Common Stock underlying the RSUs vest on the earlier of (a) the date of the 2023 Annual Meeting or (b) June 1, 2023, subject to his continued service with us.
- (6) As of December 31, 2022, Ms. McKenna held 4,770 RSUs, of which 4,770 shares of our Class A Common Stock underlying the RSUs would vest on the earlier of (a) the date of the 2023 Annual Meeting or (b) June 1, 2023, subject to her continued service with us. However, in connection with Ms. McKenna’s resignation from our board of directors on January 18, 2023, she forfeited all of her then unvested equity awards.
- (7) Mr. Robbiati became a member of our board of directors in December 2022.
- (8) Mr. Srinivasan became a member of our board of directors in December 2022, and resigned from our board in February 2023.
- (9) As of December 31, 2022, Mr. Theis held 4,770 RSUs, of which 4,770 shares of our Class A Common Stock underlying the RSUs vest on the earlier of (a) the date of the 2023 Annual Meeting or (b) June 1, 2023, subject to his continued service with us.
- (10) As of December 31, 2022, Mr. Thygesen held 4,770 RSUs, of which 4,770 shares of our Class A Common Stock underlying the RSUs vest on the earlier of (a) the date of the 2023 Annual Meeting or (b) June 1, 2023, subject to his continued service with us.
- (11) As of December 31, 2022, Mr. Williams held (i) 4,770 RSUs, of which 4,770 shares of our Class A Common Stock underlying the RSUs vest on the earlier of (a) the date of the 2023 Annual Meeting or (b) June 1, 2023, subject to his continued service with us.

**Delinquent Section 16(a) Reports**

Section 16(a) of the Exchange Act, requires that our executive officers and directors, and persons who own more than 10% of our common stock, file reports of ownership and changes of ownership with the SEC. Such directors, executive officers and 10% stockholders are required by SEC regulation to furnish us with copies of all Section 16(a) forms they file.

SEC regulations require us to identify anyone who filed a required report late during the most recent year. Based on our review of forms we received, or written representations from reporting persons stating that they were not required to file these forms, we believe that during our fiscal ended December 31, 2022, all Section 16(a) filing requirements were satisfied on a timely basis, except for one late Form 4 filing that was filed on behalf of Mr. Agarwal, our Chief Accounting Officer and deputy Chief Financial Officer, on August 4, 2022. Such late filing did not result in any liability under Section 16(b) of the Exchange Act.

## ITEM 11. EXECUTIVE COMPENSATION

### Compensation Discussion and Analysis

This Compensation Discussion and Analysis provides an overview of our executive compensation philosophy, the material principles governing executive compensation policies and decisions, and the material elements of compensation awarded to, earned by or paid to our named executive officers. In addition, we explain how and why the independent compensation committee determines the specific compensation elements that made up our 2022 executive compensation program.

Our named executive officers for fiscal 2022 were:

- Vladimir Shmunis, Chief Executive Officer (“CEO”);
- Mo Katibeh, President and Chief Operating Officer (“COO”);
- Sonalee Parekh, Chief Financial Officer (“CFO”);
- John Marlow, Chief Administrative Officer, Senior Vice President, Corporate Development, General Counsel and Secretary (“CAo”); and
- Vaibhav Agarwal, Chief Accounting Officer and former interim Chief Financial Officer.

The information in this Compensation Discussion and Analysis provides perspective and narrative analysis relating to, and should be read along with, the executive compensation tables.

Mr. Katibeh was appointed as President, effective as of May 9, 2022.

Ms. Parekh was appointed as CFO, effective as of the commencement of her employment with us in May 2022.

Mr. Agarwal was appointed interim Chief Financial Officer, effective as of January 1, 2022, and he served in such capacity until Ms. Parekh’s appointment as CFO became effective.

### 2022 Executive Compensation Highlights

Consistent with our compensation philosophy and objectives, the compensation committee took the following actions with respect to the compensation of our named executive officers for 2022:

- *Base Salary*—Adjusted base salary amounts for certain named executive officers to reflect market conditions described in the “Base Salary” section below;
- *Non-Equity Incentive Plan Compensation*—Approved a bonus plan for our named executive officers that paid out only if we achieved quarterly revenue and Non-GAAP operating margin goals that were set to be aggressive and achievable with strong leadership from our executive team described in the “Annual Incentive Compensation” section below. Quarterly payouts under the plan were made in the form of RSUs that were fully vested upon grant (or for certain of the RSUs granted to Mr. Shmunis, on the first trading day after the grant date) in order to conserve cash resources and further align the interests of our stockholders and our executive officers, described in the “Annual Incentive Compensation” section below;
- *Annual Equity Compensation*—Granted RSUs as part of our annual compensation in an effort to retain our named executive officers, provide incentives for them to continue to grow our business and enhance the link between their interests and the interests of our stockholders described in the “Equity Compensation” section below; and
- *Other Equity Compensation*—Granted (i) an equity award of 4,769 RSUs to Mr. Shmunis in April 2022 (effective in May 2022) in lieu of payment of \$494,530 of his base salary for the period April 1, 2022 through March 31, 2023, (ii) equity awards to Mr. Katibeh and Ms. Parekh in connection with their hire, (iii) equity awards to Mr. Katibeh and Mr. Agarwal in connection with their appointment as President and interim Chief Financial Officer, respectively, and (iv) an equity award of 4,673 RSUs to Mr. Marlow in March 2022 to bolster the retention value of his unvested equity awards, and (v) a special retention equity award of 35,175 RSUs to Mr. Agarwal.

## Compensation Philosophy and Objectives

The overall objective of our executive compensation program is to tie executive compensation to the performance of our Company. Our executive compensation is designed with a mix of short-term and long-term components, cash and equity elements and fixed and contingent payments in proportions that we believe provide appropriate incentives to retain and motivate our named executive officers, and other senior executives and management team and help to achieve success in our business.

Our future success depends, in part, on our ability to continue to attract and retain highly skilled personnel. Our executive compensation program seeks to achieve this objective by ensuring that we can:

- Reward talented executives, who possess the proven experience, knowledge, skills, and leadership criteria;
- Motivate our executive officers by giving them a stake in our growth and prosperity and encouraging the continuance of their services with us; and
- Align the interests of stockholders and named executive officers without creating an incentive for inappropriate risk-taking.

Based on this philosophy, we have designed our executive compensation program to encourage the achievement of strong overall financial results, particularly revenue growth and Non-GAAP operating margin.

## Executive Compensation Policies and Practices

We endeavor to maintain compensation policies and practices that are consistent with sound governance standards. We believe it is important to provide competitive compensation packages and a high-quality work environment in order to hire, retain and motivate key personnel. Our compensation committee evaluates our executive compensation program on an ongoing basis to ensure that it is consistent with our short-term and long-term goals given the nature of the market in which we compete for key personnel. The following policies and practices were in effect during 2022:

- *Independent Compensation Committee.* Our compensation committee is comprised solely of independent directors who have established effective means for communicating with each other and with stockholders, and implementing their executive compensation ideas, as well as addressing concerns;
- *Compensation Consultant.* Our compensation committee engaged its own compensation consultant, Compensia, to assist with its 2022 compensation reviews. Compensia performed no other consulting or other services for us;
- *Annual Executive Compensation Review.* Our compensation committee conducts an annual review and approval of our compensation strategy, including a review of our compensation peer group used for comparative purposes;
- *Performance-Based Compensation.* Our executive compensation program is designed so that a significant portion of compensation is performance-based, and therefore “at risk,” dependent upon corporate performance, as well as equity-based to align the interests of our executive officers with our stockholders. The overall performance and contribution of the executive is also considered in determining each individual’s compensation;
- *Minimal Perquisites and Special Benefits.* The members of our executive team are eligible to participate in broad-based Company-sponsored retirement, health and welfare benefits programs on the same basis as our other full-time, salaried employees. At this time, we do not regularly provide any perquisites or other personal benefits to the members of our executive team;
- *No “Golden Parachute” Tax Reimbursements.* We do not provide any tax reimbursement payments (including “gross-ups”) on any tax liability that our executive officers might owe as a result of the application of Sections 280G or 4999 of the Internal Revenue Code (the “Code”);
- *No Hedging and Pledging.* Our Insider Trading Policy prohibits our employees, including our executive officers and the members of our board of directors, from hedging any Company securities and from pledging any Company securities as collateral for a loan;
- *No “Single-Trigger” Change-in-Control Arrangements; “Double-Trigger” Change-in-Control Arrangements.* There are no payments and benefits that are payable solely as a result of a change-in-control in the Company. All

change-in-control payments and benefits are based on a “double-trigger” arrangement (that is, they require both a change-in-control of our Company plus an involuntary termination of employment before payments and benefits are paid); and

- *Stockholder Advisory Votes on Named Executive Officer Compensation.* Our stockholders have an opportunity to cast an advisory vote to (i) approve our named executive officers’ compensation and (ii) approve the frequency of the vote to approve the named executive officers’ compensation. Our stockholders have voted in favor of annual advisory votes on the named executive officers’ compensation. At the 2022 annual meeting of stockholders, approximately 69% of the votes cast voted to approve our named executive officers’ compensation. We believe that the results of this vote affirm our stockholders’ support of our approach to executive compensation, and therefore we have not made any significant changes to our executive compensation program. We will consider the results from this year’s and future years’ stockholder advisory votes on named executive officer compensation when making decisions about our executive compensation program. No changes in the overall structure of the programs were made in 2022.

## **Compensation-Setting Process**

### ***Compensation Committee***

Each year, our compensation committee conducts a review of our executive compensation program and related policies and practices. At the beginning of each year, the compensation committee assesses the prior year performance and establishes bonus targets and metrics for the current year and annual equity award grants for our named executive officers. In addition, the compensation committee reviews and determines the base salary of our named executive officers. In determining the compensation of the members of our executive team, including our named executive officers, for 2022, our compensation committee reviewed the compensation arrangements, including base salary, target bonus and equity compensation, of our executive officers and considered an analysis of competitive market data presented by the compensation committee’s advisor, Compensia, a national compensation consulting firm that provides executive compensation advisory services, as well as our overall strategic business plan. Market data was used primarily as a reference point for measuring the competitive marketplace, and was one factor among others, used by the compensation committee in determining executive compensation. Other factors the compensation committee considers in making its executive compensation decisions include: input from our CEO, COO, and CAo (except regarding their own compensation), past individual performance and expected future performance, vesting status and value of existing equity awards, and internal pay equity based on the impact of business and performance.

### ***Role of Management***

In carrying out its responsibilities, the compensation committee works with members of our management, including our CEO, President and COO, and CAo. Typically, these members of management and our CFO assist the compensation committee in developing the annual bonus plans based on metrics that contain attainable target levels that are achievable through the commitment and leadership of our executive officers. Our CEO provides recommendations on compensation matters for our employees in general and all of his direct reports, including our executive officers. The CEO, President and COO, CAo and CFO usually attend compensation committee meetings. No members of management participate in discussions or decisions regarding their own compensation and none of them are present when their own compensation is determined.

### ***Role of Compensation Consultant***

Compensia has been engaged by and serves as the compensation committee’s compensation consultant. Compensia reviews the compensation arrangements of the members of our executive team and generally assists the compensation committee in analyzing executive officer and employee compensation, and the compensation of non-employee members of our board of directors. Compensia provides support for the compensation committee by attending meetings of the compensation committee, providing recommendations regarding the composition of our compensation peer group, analyzing compensation data and formulating recommendations for executive and non-employee director compensation. Our compensation committee also works directly with Compensia from time to time to obtain additional information or clarity regarding data provided by Compensia, and also requests specific analyses to assist the compensation committee in the design and structure of our executive and non-employee director compensation programs.

The compensation committee has determined that the work of Compensia does not give rise to any “conflict of interest” in accordance with Item 407(e)(3) (iv) of Regulation S-K and the listing standards of the NYSE.

### ***Competitive Positioning***

In setting executive compensation, our compensation committee uses publicly-available data on the compensation policies and practices of comparable publicly-traded companies as a reference to understand the competitive market for executive talent. With respect to decisions regarding the 2022 compensation of the members of our executive team, including the named executive officers, our compensation committee reviewed an analysis prepared by Compensia of competitive market data derived from the companies in the following compensation peer group (which was approved by our compensation committee in January 2022):

|                      |                 |                           |
|----------------------|-----------------|---------------------------|
| ANSYS                | Paycom Software | Twilio                    |
| CrowdStrike Holdings | Salesforce      | Veeva Systems             |
| Datadog              | ServiceNow      | Workday                   |
| DocuSign             | Shopify         | Zendesk                   |
| HubSpot              | Splunk          | Zoom Video Communications |
| Okta                 | The Trade Desk  |                           |

In selecting the companies that comprised the compensation peer group, the compensation committee focused primarily on public companies in the same or similar country or countries of operation, industry group and financial comparability, which include revenue and market capitalization. The companies that comprise the peer group are our competitors in the labor and capital markets and have similar growth and performance potential.

This competitive market data was used as a reference in the course of our compensation committee's review and evaluation of our executive compensation program and decisions regarding executive compensation in 2022. The competitive market data is useful to understand market practice and to provide a general context for its decisions. The compensation committee determines the nature and the extent of the use of market data, which varies by executive. Actual compensation is based on individual performance, experience, responsibilities and other criteria selected by our compensation committee. While the compensation committee does not target any component of our executive compensation program to a particular level versus the competitive market, our compensation committee generally refers to a range of the 50th to the 75th market percentile when making its executive compensation decisions. The competitive market data was not used to benchmark the compensation for our named executive officers.

### **Compensation Overview**

Our executive compensation program for 2022 consisted of the following principal compensation elements:

- Base salary (with our CEO receiving a special equity award in lieu of amounts that would have otherwise been paid as base salary and our other named executive officers receiving a portion of their base salaries in the form of fully vested RSUs);
- Annual incentive compensation paid if earned in the form of RSUs each quarter; and
- Long-term incentive compensation in the form of annual grants of time-based RSUs, equity awards granted in connection with the hire or appointment of certain named executive officers, an equity award to our CAo to bolster the retention value of his unvested equity awards, and a special retention equity award to our Chief Accounting Officer.

We are committed to providing appropriate cash and equity incentives to compensate our named executive officers in a manner that our compensation committee determines is reasonable and appropriate to motivate and retain key talent.

### **Base Salary**

Base salary is a customary, fixed element of compensation intended to attract and retain our named executive officers and compensate them for their day-to-day efforts. Our board of directors and/or the compensation committee reviews base salary every year, as well as at the time of a promotion or other change in responsibilities, and considers each executive officer's performance, prior base salary level, the competitive market data, breadth of role, and the other factors described in the "Compensation Setting Process-Compensation Committee" section above. Our board of directors and the compensation committee do not target base pay at any particular level versus the competitive market data. In 2022, Mr. Shmunis's base salary



was decreased at his request, and Messrs. Marlow and Agarwal received adjustments to their base salaries to (i) reflect changes to the competitive market, (ii) retain these named executive officers to grow and expand our business, and (iii) in the case of Mr. Agarwal, to reflect his appointment as interim Chief Financial Officer. These base salary changes were effective on April 1, 2022. Mr. Katibeh's and Ms. Parekh's base salaries at hire were determined through arm's-length negotiation. In connection with his appointment as President, in May 2022, Mr. Katibeh received a \$100,000 increase to his base salary (from \$500,000 to \$600,000).

In November 2021, our compensation committee approved the 2022 NEO Equity Compensation Program (the "NEO Equity Compensation Program"), which provided each then-named executive officer (other than Mr. Shmunis) the opportunity to receive all but \$60,000 of his or her base salary for 2022 in the form of awards of fully vested RSUs to be granted under the 2013 Plan on the first trading day on or after January 3, February 15, May 15, August 15, and November 15 of 2022. The number of RSUs a participating named executive officer received on each grant date equaled the portion of his or her salary for the applicable period (as noted below) that was to be paid in RSUs divided by the closing price of a share of our Class A Common Stock on the grant date. Messrs. Katibeh, and Marlow and Ms. Parekh elected to participate in the NEO Equity Compensation Program.

In November 2021, our compensation committee also approved the 2022 Non-NEO Equity Compensation Program (the "NEO Equity Compensation Program"), which provided each employee at or above the assistant vice president level (other than then-named executive officers) the opportunity to receive all but \$135,000 or \$60,000 of his or her base salary for 2022 in the form of awards of fully vested RSUs to be granted under the 2013 Plan on the first trading day on or after January 3, February 15, May 15, August 15, and November 15 of 2022. The number of RSUs a participating employee received on each grant date equaled (x) a specified amount (if applicable) plus 105% of the portion of his or her salary for the applicable period (as noted below) that was to be paid in RSUs divided by (y) the closing price of a share of our Class A Common Stock on the grant date. For each participating employee that elected to receive all but \$135,000 of his or her 2022 base salary as fully vested RSUs, the specified amount was \$5,000 for the first RSU award (granted on January 3, 2022) only. For each participating employee that elected to receive all but \$60,000 of his or her 2022 base salary as fully vested RSUs, the specified amount was \$3,000 for each of the five RSU awards granted throughout 2022. Mr. Agarwal participated in the Non-NEO Equity Compensation Program and elected to receive all but \$135,000 of his 2022 base salary as fully vested RSUs. Our compensation committee determined that it was appropriate to have Mr. Agarwal participate in the Non-NEO Equity Compensation Program rather than the NEO Equity Compensation Program because his appointment as Chief Financial Officer was on an interim basis.

In November 2022, the compensation committee approved similar plans for 2023. Each year the compensation committee will assess whether to continue the NEO Equity Compensation Program and the Non-NEO Equity Compensation Program.

The following table sets forth the 2022 base salary for each of our named executive officers.

| Name             | 2022<br>Base Salary       | 2021<br>Base Salary | Percent<br>Increase/(decrease) |
|------------------|---------------------------|---------------------|--------------------------------|
| Vladimir Shmunis | \$ 500,000 <sup>(1)</sup> | \$700,000           | (28.6)%                        |
| Mo Katibeh       | \$ 600,000 <sup>(2)</sup> | —                   | —                              |
| Sonalee Parekh   | \$ 500,000 <sup>(3)</sup> | —                   | —                              |
| John Marlow      | \$ 450,000 <sup>(4)</sup> | \$375,000           | 20.0%                          |
| Vaibhav Agarwal  | \$ 500,000 <sup>(5)</sup> | \$300,000           | 66.7%                          |

(1) Mr. Shmunis received (i) an award of 2,178 RSUs in lieu of payment in cash of \$695,080 of his salary for the period from April 1, 2021 through March 31, 2022, and (ii) an award of 4,769 RSUs in lieu of payment in cash of \$494,530 of his salary for the period from April 1, 2022 through March 31, 2023.

(2) Under the NEO Equity Compensation Program, Mr. Katibeh received (i) an award of 1,758 RSUs in lieu of payment in cash of \$110,000 of his salary for the period from May 16, 2022 through August 15, 2022, (ii) awards covering a total of 3,050 RSUs in lieu of payment in cash of \$160,000 of his salary for the period from August 16, 2022 through November 15, 2022, and (iii) awards covering a total of 1,620 RSUs in lieu of payment in cash of \$67,500 of his salary for the period from November 16, 2022 through December 31, 2022.

- (3) Under the NEO Equity Compensation Program, Ms. Parekh received (i) an award of 2,097 RSUs in lieu of payment in cash of \$110,000 of her salary for the period from August 16, 2022 through November 15, 2022, and (iii) an award of 1,320 RSUs in lieu of payment in cash of \$55,000 of her salary, respectively for the period from November 16, 2022 through December 31, 2022.
- (4) Under the NEO Equity Compensation Program, Mr. Marlow received (i) an award of 205 RSUs in lieu of payment in cash of \$39,375 of his salary for the period from January 1, 2022 to February 15, 2022, (ii) an award of 455 RSUs in lieu of payment in cash of \$78,750 of his salary for the period from February 16, 2022 through May 15, 2022, (iii) an award of 1,708 RSUs in lieu of payment in cash of \$106,875 of his salary for the period from May 16, 2022 through August 15, 2022, (iv) an award of 1,858 RSUs in lieu of payment in cash of \$97,500 of his salary for the period from August 16, 2022 through November 15, 2022, and (v) an award of 1,170 RSUs in lieu of payment in cash of \$48,750 of his salary for the period from November 16, 2022 through December 31, 2022.
- (5) Under the Non-NEO Equity Compensation Program, Mr. Agarwal received (i) an award of 139 RSUs in lieu of payment in cash of \$20,625 of his salary for the period from January 1, 2022 to February 15, 2022, (ii) an award of 251 RSUs in lieu of payment in cash of \$41,250 of his salary for the period from February 16, 2022 through May 15, 2022, (iii) an award of 2,091 RSUs in lieu of payment in cash of \$33,333 of his salary for the period from April 1, 2022 through May 15, 2022 (which represents the incremental salary he received for that period as a result of his salary increase in connection with his appointment as interim Chief Financial Officer) and \$91,250 of his salary for the period from May 16, 2022 through August 15, 2022, (iv) an award of 1,826 RSUs in lieu of payment in cash of \$91,250 of his salary for the period from August 16, 2022 through November 15, 2022, and (v) an award of 1,150 RSUs in lieu of payment in cash of \$45,625 of his salary for the period from November 16, 2022 through December 31, 2022.

The actual base salaries paid to our named executive officers during 2022 are set forth in the Summary Compensation Table below. As described above and in the footnotes to the Summary Compensation Table, portions of the salaries for our named executive officers were paid in the form of RSUs that are listed in the 2022 Grants of Plan-Based Awards Table below.

### Annual Incentive Compensation

The compensation committee establishes annual incentive compensation opportunities under our bonus plan (the “Bonus Plan”). Consistent with our historical practices, bonuses for 2022 under the Bonus Plan were designed to motivate and reward our named executive officers, to perform to the best of their abilities and to achieve our objectives.

#### Target Annual Incentive Opportunities

In March 2022, the compensation committee reviewed the target annual incentive opportunities of Messrs. Shmunis, Marlow, and Agarwal, taking into consideration each named executive officer’s total annual compensation opportunity, the competitive market data with an emphasis generally on the 50th through 75th percentile of total target cash compensation opportunities, breadth of responsibilities and the other factors described in the “Compensation Setting Process-Compensation Committee” section above. Following this review, the compensation committee increased the target annual incentive opportunity for Mr. Agarwal to 75% of his base salary, in connection with his appointment as interim Chief Financial Officer. Mr. Katibeh’s and Ms. Parekh’s target annual incentive opportunities were determined through arm’s-length negotiation when they were hired.

The target annual incentive opportunities of our named executive officers for 2022 were:

| Name             | 2022 Target Bonus Opportunity (as a % of 2022 Base Salary) | 2022 Target Bonus Opportunity |
|------------------|--|-------------------------------|
| Vladimir Shmunis | 100 %  | \$ 550,000                    |
| Mo Katibeh       | 100 %  | \$ 575,000                    |
| Sonalee Parekh   | 100 %  | \$ 312,500                    |
| John Marlow      | 100 %  | \$ 450,000                    |
| Vaibhav Agarwal  | 75 %   | \$ 324,875                    |

#### 2022 Bonus Plan Design and Achievement

For 2022, there are four quarterly performance periods, ending on March 31, June 30, September 30, and December 31. The bonus pool under the Bonus Plan funds based on our achievement against the quarterly target levels established by the compensation committee of the following performance metrics (weighted 50% each): (i) revenues and (ii) Non-GAAP operating margin. These metrics have the following meanings under the Bonus Plan:

- “revenues” means the Company’s net revenues generated from third parties, including both services revenues and other revenues, each as defined in our Form 10-K filed for the calendar year ended December 31, 2021, as amended. Net revenue is defined as gross sales less any pertinent discounts, refunds, or other contra-revenue amounts, as presented on the Company’s press release reporting the applicable quarterly financial results.
- “Non-GAAP operating margin” means the Company’s Non-GAAP income from operations divided by its “revenues.” Non-GAAP income from operations means the Company’s “revenues” less cost of revenues and operating expenses, excluding share-based compensation expense, amortization of acquisition related intangibles, legal settlement related charges and as adjusted for certain acquisitions, as presented on the Company’s press release reporting the applicable quarterly financial results.

For purposes of the performance periods covering the third and fourth quarters of 2022, the compensation committee determined that revenues would be adjusted for constant currency in light of significant currency fluctuations in the second half of fiscal 2022. The adjusted revenue figure was calculated from the Company’s audited financial statements by restating actual revenue using foreign exchange rates in effect as of December 31, 2021.

With respect to revenues, for 100% of the bonus pool for any particular quarter to fund, 100% to 101% of the quarterly revenues target established by the compensation committee was to be achieved. For each 0.1% of revenues that was achieved above the 101% of the quarterly revenues target established by the compensation committee, the bonus pool with respect to revenue would be increased by 1%, and for each 0.1% of revenue that was achieved below 100% of the quarterly revenues target established by the compensation committee, the bonus pool with respect to revenues would be reduced by 1%.

With respect to Non-GAAP operating margin, for 100% of the bonus pool for any particular quarter to fund, the quarterly Non-GAAP operating margin must be within 0.4 points of the 100% of the quarterly Non-GAAP operating margin target established by the compensation committee (this 0.8-point range, the “quarterly Non-GAAP operating margin target range”). For each 0.1% of the Non-GAAP operating margin that was achieved above the quarterly Non-GAAP operating margin target range, the bonus pool with respect to Non-GAAP operating margin would be increased by 1% (up to a maximum of 120%), and for each 0.1% of Non-GAAP operating margin that was below the quarterly Non-GAAP operating margin target range, the bonus pool with respect to Non-GAAP operating margin would be reduced by 1%.

For the bonus pool under the Bonus Plan to fund for any particular quarter, we had to achieve (i) quarterly revenues at least equal to revenues expected by analyst consensus estimates after we publicly disclosed our guidance for such quarter, and (ii) quarterly Non-GAAP operating margin at least equal to Non-GAAP operating margin expected by analyst consensus estimates after we publicly disclosed our guidance for such quarter.

The following chart sets forth our 2022 quarterly targets against each metric under the Bonus Plan, actual achievement against those targets, and the corresponding percentage payouts to the named executive officer each quarter:

|                           | Revenue  |          |          |          | Non-GAAP Operating Margin |         |         |         |
|---------------------------|----------|----------|----------|----------|---------------------------|---------|---------|---------|
|                           | Q1       | Q2       | Q3       | Q4       | Q1                        | Q2      | Q3      | Q4      |
| Target (in millions)      | \$ 464.3 | \$ 494.3 | \$ 530.8 | \$ 576.3 | 9.2 %                     | 9.5 %   | 10.5 %  | 12.8 %  |
| Achievement (% of Target) | 100.7 %  | 98.5 %   | 97.0 %   | 94.0 %   | 113.0 %                   | 118.9 % | 128.6 % | 116.4 % |
| Payout (% of Target)      | 100.0 %  | 85.0 %   | 70.0 %   | 36.0 %   | 108.0 %                   | 114.5 % | 120.0 % | 118.0 % |

Based upon our actual financial performance as measured against the approved performance metrics and the formula under the Bonus Plan, the payout percentages for each of the four quarters in 2022 were as follows: 104.0% (Q1), 100.0% (Q2), 95.0% (Q3), and 77.0% (Q4).

In November 2021, our compensation committee approved the 2022 Key Employee Equity Bonus Plan (the “Key Employee Bonus Plan”), which provided that the then-named executive officers will receive any quarterly bonus achieved and payable under the Bonus Plan for 2022 in the form of RSUs granted under the 2013 Plan. The number of RSUs each named executive officer received equaled the dollar value of the quarterly bonus (or for Mr. Agarwal, 105% of his quarterly bonus) divided by the lower of the closing price of a share of our Class A Common Stock (i) on the first trading day of the quarter for which the quarterly bonus is assessed or (ii) on the first trading day on or after May 15, August 15, November 15 or February 15 (or for the RSUs granted to Mr. Shmunis in payment of his bonuses for the first, second, third, and fourth quarters of 2022, the first trading day on or before May 19, August 19, November 19, or February 19) following the quarter for which the quarterly bonus is assessed. In the case of Mr. Agarwal’s third quarter bonus, the dollar value of the bonus was adjusted by our compensation committee to reward him for his exceptional performance. The RSUs issued to our named executive officers

were fully vested upon grant. In December 2022, the compensation committee approved a similar plan governing 2023 bonuses. Each year the compensation committee will assess whether to continue the Key Employee Bonus Plan.

The aggregate dollar values of the bonuses earned by our named executive officers under the Bonus Plan for 2022 are listed in the “Non-Equity Incentive Compensation” column of the Summary Compensation Table. As described above and in the footnotes to the Summary Compensation Table, each earned quarterly bonus was paid in the form of RSUs that are listed in the 2022 Grants of Plan-Based Awards Table below.

### Equity Compensation

We use RSUs to deliver long-term incentive compensation opportunities to our named executive officers. Consistent with our compensation objectives, we believe this approach helps to ensure that the interests of the members of executive team are aligned with those of our stockholders and that we are able to attract and reward our top talent. In 2022, the compensation committee determined not to grant stock options to our named executive officers and to grant only RSUs to management in order to better identify the interests of our named executive officers and our stockholders and to reduce our corporate-wide dilution.

The compensation committee does not target equity compensation at any particular level versus the competitive market data, although it uses the range of the 50th percentile to the 75th percentile as a reference point during the course of its deliberations. RSUs serve as a retention tool as they vest based on continued service over time.

In March 2022, our compensation committee approved annual equity awards to Messrs. Shmunis, Katibeh, and Marlow to reward them for our strong corporate performance and their individual performance and to ensure that the equity awards they held were sufficient to continue to provide them with appropriate incentives to continue to grow our business, with such equity award grants becoming effective in March 2022 (or in Mr. Shmunis’s case, April 2022). Each of these annual equity awards vests as to 1/8th of the RSUs on May 20, 2022, and as to 1/16th of the RSUs every three months afterwards, in each case, subject to the applicable named executive officer’s continued service as of each vesting date.

In determining the size of these awards, the compensation committee took into consideration each executive officer’s current vested and unvested equity holdings, competitive market data, and the other factors described in the “Compensation Setting Process-Compensation Committee” section above.

The intended values of the annual equity awards to the named executive officers approved in March 2022 are listed below, and the number of shares covered by each of these equity awards is equal to the award’s intended value divided by the average closing price of a share of our common stock during the first eleven calendar days in the month of March 2022, rounded up to the nearest whole share.

| <b>Name</b>      | <b>Intended Value of RSUs</b> |
|------------------|-------------------------------|
| Vladimir Shmunis | \$ 18,000,000                 |
| Mo Katibeh       | \$ 4,160,000                  |
| John Marlow      | \$ 6,000,000                  |

In March 2022, after assessing the competitive market conditions and the retention value of his unvested equity awards, our compensation committee also approved an additional award of 4,673 RSUs to Mr. Marlow. This award vests as to 1/4th of the RSUs on May 20, 2022, and every three months afterwards, in each case, subject to Mr. Marlow’s continued service as of each vesting date.

In January 2022, our compensation committee approved the grant of (i) a new hire award of 69,279 RSUs to Mr. Katibeh, effective February 1, 2022, and (ii) a \$1,000,000 signing bonus to be paid and settled in fully-vested RSUs in two equal installments in February 2022 and May 2022. The number of shares covered by the new hire award was equal to the award’s intended value of \$12,000,000 divided by the average closing price of a share of our common stock during the month of January 2022. The new hire award vests as to 1/8th of the RSUs on August 20, 2022, 1/8th of the RSUs on February 20, 2023, and as to 1/16th of the RSUs every three months afterwards, in each case, subject to Mr. Katibeh’s continued service as of each vesting date.

In connection with his appointment as President, Mr. Katibeh was granted the following equity awards in May 2022: (i) a time-based award of 26,713 RSUs that vests as to 1/4th of the RSUs on February 20, 2023, and as to 1/16th of the RSUs every three months afterwards, in each case, subject to Mr. Katibeh's continued service as of each vesting date; and (ii) a performance-based award of 26,713 RSUs that vests according to the same vesting schedule as the time-based award, except that if our board of directors establishes performance-based metrics on or before the date of our release of first quarter 2023 earnings, the vesting of any portion of the performance-based award scheduled to vest after February 20, 2023, will be contingent on the Company achieving such performance-based metrics.

In connection with her hire, Ms. Parekh was granted the following equity awards in May 2022: (i) a time-based new hire award of 106,850 RSUs that vests as to 1/4th of the RSUs on May 20, 2023, and as to 1/16th of the RSUs every three months afterwards, in each case, subject to Ms. Parekh's continued service as of each vesting date; and (ii) a performance-based new hire award of 26,713 RSUs that vests according to the same vesting schedule as the time-based new hire award, except that if our board of directors establishes performance-based metrics on or before the date of our release of first quarter 2023 earnings, the vesting of any portion of the performance-based new hire award scheduled to vest after May 20, 2023, will be contingent on the Company achieving such performance-based metrics. In addition, in April 2022, our compensation committee approved the grant of a \$2,300,000 signing bonus to be paid and settled in fully-vested RSUs in two equal installments in May 2022 and November 2022.

In connection with his appointment as interim Chief Financial Officer, Mr. Agarwal received the following equity awards in March 2022: (i) an award of 69,225 RSUs that vests as to 1/8th of the RSUs on May 20, 2022, and as to 1/16th of the RSUs every three months afterwards, and (ii) an award of 1,753 RSUs that vests as to 1/4th of the RSUs on May 20, 2022, and every three months afterwards, in each case, subject to Mr. Agarwal's continued service as of each vesting date.

In July 2022, our compensation committee approved the grant of a special retention equity award of 35,175 RSUs to Mr. Agarwal. The number of shares covered by the equity award was equal to the award's intended value of \$2,000,000 divided by the average closing price of a share of our common stock during the month of June 2022, rounded up to the nearest whole share. The award was scheduled to vest as to 50% of the RSUs on May 20, 2023, and as to 1/8th of the RSUs every three months afterwards, in each case, subject to Mr. Agarwal's continued service as of each vesting date. In September 2022, our compensation committee replaced this equity award with an award of 41,984 RSUs. The number of shares covered by this equity award is equal to the award's intended value of \$2,000,000 divided by the average closing price of a share of our common stock during the month of August 2022, rounded up to the nearest whole share. The award vests as to 1/4th of the RSUs on November 20, 2022, and as to 1/8th of the RSUs every three months afterwards, in each case, subject to Mr. Agarwal's continued service as of each vesting date.

In addition, in April 2022, we granted Mr. Shmunis a special equity award of 4,769 RSUs (effective in May 2022) in lieu of payment in cash of \$494,530 of his salary for the period from April 1, 2022 through March 31, 2023, in order to conserve cash resources and to enhance the link between Mr. Shmunis's interest and those of our stockholders. These RSU awards vest 1/4th every three months and become fully vested after one year, subject to Mr. Shmunis's continued service as of each vesting date.

In 2022, Mr. Katibeh received the following RSU awards under our NEO Equity Compensation Program: (i) in May 2022, an award of 1,758 RSUs in lieu of payment in cash of \$110,000 of his salary for the period from May 16, 2022 through August 15, 2022, (ii) in August 2022, awards covering a total of 3,050 RSUs in lieu of payment in cash of \$160,000 of his salary for the period from August 16, 2022 through November 15, 2022, and (iii) in November 2022, awards covering a total of 1,620 RSUs in lieu of payment in cash of \$67,500 of his salary for the period from November 16, 2022 through December 31, 2022.

In 2022, Ms. Parekh received the following RSU awards under our NEO Equity Compensation Program: (i) in August 2022, an award of 2,097 RSUs in lieu of payment in cash of \$110,000 of her salary for the period from August 16, 2022 through November 15, 2022, and (iii) in November 2022, an award of 1,320 RSUs in lieu of payment in cash of \$55,000 of her salary, respectively for the period from November 16, 2022 through December 31, 2022.

In 2022, Mr. Marlow received the following RSU awards under our NEO Equity Compensation Program: (i) in January 2022, an award of 205 RSUs in lieu of payment in cash of \$39,375 of his salary for the period from January 1, 2022 to February 15, 2022, (ii) in February 2022, an award of 455 RSUs in lieu of payment in cash of \$78,750 of his salary for the period from February 16, 2022 through May 15, 2022, (iii) in May 2022, an award of 1,708 RSUs in lieu of payment in cash of \$106,875 of his salary for the period from May 16, 2022 through August 15, 2022, (iv) in August 2022, an award of 1,858 RSUs in lieu of payment in cash of \$97,500 of his salary for the period from August 16, 2022 through November 15, 2022, and

(v) in November 2022, an award of 1,170 RSUs in lieu of payment in cash of \$48,750 of his salary for the period from November 16, 2022 through December 31, 2022.

In 2022, Mr. Agarwal received the following RSU awards under our Non-NEO Equity Compensation Program: (i) in January 2022, an award of 139 RSUs in lieu of payment in cash of \$20,625 of his salary for the period from January 1, 2022 to February 15, 2022, (ii) in February 2022, an award of 251 RSUs in lieu of payment in cash of \$41,250 of his salary for the period from February 16, 2022 through May 15, 2022, (iii) in May 2022, an award of 2,091 RSUs in lieu of payment in cash of \$124,583 of his salary for the period from May 16, 2022 through August 15, 2022, (iv) in August 2022, an award of 1,826 RSUs in lieu of payment in cash of \$91,250 of his salary for the period from August 16, 2022 through November 15, 2022, and (v) in November 2022, an award of 1,150 RSUs in lieu of payment in cash of \$45,625 of his salary for the period from November 16, 2022 through December 31, 2022.

In addition, each named executive officer is entitled to certain vesting acceleration benefits upon a qualifying termination, as described in the “Executive Employment Arrangements” and “Other Change in Control Provisions” sections below.

The grant date fair values of these equity awards granted to our named executive officers in 2022 are listed in the “Stock Awards” column of the Summary Compensation Table and in the 2022 Grants of Plan-Based Awards Table below.

As discussed above, we also issued RSUs to our named executive officers under the Key Employee Bonus Plan in settlement of their annual incentive payments under the Bonus Plan for 2022. These RSUs are listed in the 2022 Grants of Plan-Based Awards Table below.

### **Welfare and Other Employee Benefits**

Our named executive officers are eligible to participate in the same group insurance and employee benefit plans generally available to our other salaried employees in the U.S. These benefits include medical, dental, vision, and disability benefits and other plans and programs made available to other eligible employees. We have a qualified defined contribution plan under Code Section 401(k) covering eligible employees, including our named executive officers. All participants in the plan, including each named executive officer, are eligible to make pre-tax contributions. We provide a Company 401(k) plan matching program of 50% of the employee’s contributions up to the lesser of 6% of employee cash compensation and \$4,050 per year. All participant 401(k) contributions and earnings, as well as all matching contributions and earnings, are fully and immediately vested.

### **Perquisites**

We do not view perquisites or other personal benefits as a significant component of our executive compensation program. Accordingly, we do not regularly provide special plans or programs for our named executive officers. However, in 2022, we made payments to Messrs. Shmunis and Marlow to cover the cost associated with filings required to be made by them under the Hart-Scott Rodino Antitrust Improvements Act of 1976 and the associated taxes. These payments were provided to Messrs. Shmunis and Marlow because, absent their status as officers, they would be exempt from such filing requirements as private investors. The total amount of these payments is set forth in the “All Other Compensation” column of the Summary Compensation Table below.

All practices with respect to perquisites or other personal benefits will be subject to review and approval by the compensation committee.

### **Post-Employment Compensation**

Our employment arrangements with Messrs. Shmunis, Katibeh and Marlow and Ms. Parekh provide for certain payments and benefits in the event of a qualifying termination of employment, including a termination of employment in connection with a change in control of the Company. We believe that these agreements will enable our named executive officers to maintain their focus and dedication to their responsibilities to help maximize stockholder value by minimizing distractions due to the possibility of an involuntary termination of employment or a termination of employment in connection with a potential change in control of the Company. We also believe that these arrangements further our interest in encouraging retention among our named executive officers.

In addition, our named executive officers are participants in the Company’s Equity Acceleration Policy which contains provisions providing for double-trigger vesting upon certain changes in control, as described in the “Other Change in Control

Provisions” section below. We believe this policy provides important retention incentives for our key contributors through and following a change in control.

### **Executive Employment Arrangements**

The initial terms and conditions of employment for each of our executive officers (including our named executive officers that remain with us) are set forth in a written employment agreement. Each of these agreements was approved on our behalf by our board of directors or the compensation committee, as applicable.

We develop competitive compensation packages to attract qualified candidates in a highly-competitive labor market. We believe that these arrangements will help the named executive officers maintain continued focus and dedication to their responsibilities to help maximize stockholder value if there is a potential transaction that could involve a change in control of our Company.

#### *Vladimir Shmunis*

We entered into an executive employment letter with Mr. Shmunis, our CEO, dated September 13, 2013. In 2022, Mr. Shmunis’s annual base salary was \$500,000, and he was eligible to earn an annual incentive bonus of up to 100% of his base salary. The executive employment letter with Mr. Shmunis provides for a three-year employment term and may be extended by mutual agreement at the end of the term, but either we or Mr. Shmunis may terminate the employment relationship with us at any time.

If, outside of the period beginning three months prior to and ending 12 months after a change of control of the Company (such period, the “Change of Control Period”), Mr. Shmunis’s employment is terminated without “cause” (excluding by reason of death or “disability”) or he resigns for “good reason” (as such terms are defined in the executive employment letter), he will be eligible to receive the following payments and benefits if he timely signs and does not revoke a release agreement with us:

- continued payment of base salary for a period of 12 months; and
- reimbursement of COBRA premiums to continue health insurance coverage for him and his eligible dependents for up to 12 months, or taxable monthly payments for the equivalent period in the event reimbursement of COBRA premiums would violate applicable law.

If, within the Change of Control Period, his employment is terminated without cause (excluding by reason of death or “disability”) or he resigns for good reason, he will be entitled to the following payments and benefits if he timely signs and does not revoke a release agreement with us:

- a lump sum payment equal to (i) 18 months of his annual base salary, plus (ii) 1.5x the greater of his target annual bonus for the year of the change of control or the year of his termination;
- reimbursement of COBRA premiums to continue health insurance coverage for him and his eligible dependents for up to 18 months, or taxable monthly payments for the equivalent period in the event reimbursement of COBRA premiums would violate applicable law; and
- 100% accelerated vesting of all outstanding equity awards.

In the event any of the amounts provided for under the executive employment letter or otherwise payable to Mr. Shmunis would constitute “parachute payments” within the meaning of Code Section 280G and could be subject to the related excise tax, Mr. Shmunis would be entitled to receive either full payment of benefits under the executive employment letter or such lesser amount which would result in no portion of the benefits being subject to the excise tax, whichever results in the greater amount of after-tax benefits to Mr. Shmunis. The executive employment letter does not require us to provide any tax gross-up payments.

#### *Mo Katibeh*

We entered into an executive employment offer letter with Mr. Katibeh, our President and Chief Operating Officer, dated January 4, 2022. The offer letter has no specific term and provides for at-will employment. The offer letter provides for an annual base salary of \$500,000 and an annual incentive bonus of up to 100% of Mr. Katibeh’s base salary. As a member of

our executive team, the achieved portion of Mr. Katibeh's annual incentive bonus will be paid in the form of fully-vested RSUs in accordance with the Key Employee Equity Bonus Plan.

Under the offer letter, Mr. Katibeh received an initial grant of 69,279 RSUs that vests as to 1/8th of the RSUs on August 20, 2022, 1/8th of the RSUs on February 20, 2023, and as to 1/16th of the RSUs every three months afterwards, in each case, subject to Mr. Katibeh's continued service as of each vesting date.

In addition, Mr. Katibeh also received a signing bonus in the form of fully-vested RSUs having an aggregate value of \$1,000,000, which was paid in two equal installments, each having a value of \$500,000 (with the first installment paid in February 2022 and the second installment paid in November 2022). Mr. Katibeh will be required to reimburse us for the total amount of the signing bonus if, within one year from his start date, he is terminated for "cause" (as defined in the offer letter) or he voluntarily terminates his employment without "good reason" (as defined in the Equity Acceleration Policy).

Under the offer letter, Mr. Katibeh was also entitled to payment or reimbursement by us for expenses he reasonably incurred on or before August 31, 2022, in connection with his relocation to the San Francisco Bay Area, including (i) assistance in obtaining temporary housing for him and his family, including the reasonable cost of such temporary housing through August 31, 2022, and (ii) up to \$60,000 of other relocation and moving-related expenses (but excluding any costs or other expenses related to the sale or purchase of his permanent residence). The offer letter also entitled Mr. Katibeh to reimbursement of up to \$5,000 of legal expenses related to the offer letter and affiliated documents.

If Mr. Katibeh's employment is terminated by the Company without cause (including by reason of death or "disability" (as defined in the offer letter)) or he resigns for good reason, he will be eligible to receive the following payments and benefits if he timely signs and does not revoke a release agreement with us:

- cash severance equal to his then-current base salary for a period of (i) six months if such termination is by us other than for cause, death, or disability or by him for good reason or (ii) twelve months if such termination is by us due to his death or disability;
- reimbursement of COBRA premiums through the earlier of (i) the 12-month anniversary of the date of the termination of employment or (ii) the date on which Mr. Katibeh or his eligible dependents, as applicable, cease to be eligible for COBRA continuation coverage, provided that if we determine that we cannot make these COBRA reimbursements without potentially violating applicable law, Mr. Katibeh will instead receive a taxable lump sum payment of \$30,000 in lieu of such COBRA reimbursements; and
- the following equity award vesting acceleration benefit:
  - if such termination occurs during the period beginning 90 days prior to a "change of control" (as defined in the Equity Acceleration Policy) and ending 12 months following a change of control, then under the Equity Acceleration Policy, 50% acceleration of vesting of any of his then-outstanding and unvested equity awards subject to time-based vesting conditions, subject to the terms and conditions of the Equity Acceleration Policy, or
  - if such termination occurs outside of the period described in the previous bullet, acceleration of vesting of the portion of any of his then-outstanding and unvested equity awards subject to time based vesting conditions that would have vested if he had remained employed with us through the date that is 6 months following his effective last day with us.

In connection with his appointment as President, we entered into a supplemental letter with Mr. Katibeh, dated May 9, 2022, which amended and supplemented his executive employment offer letter. The supplemental letter provides for an annual base salary of \$600,000 and an annual incentive bonus of up to 100% of Mr. Katibeh's base salary. Under the supplemental letter, Mr. Katibeh also received an award of 26,713 RSUs that vests as to 1/4th of the RSUs on February 20, 2023, and as to 1/16th of the RSUs every three months afterwards, in each case, subject to Mr. Katibeh's continued service as of each vesting date. However, if our board of directors establishes performance-based metrics on or before the date of our release of first quarter 2023 earnings, the vesting of any portion of the award scheduled to vest after February 20, 2023, will be contingent on the Company achieving such performance-based metrics.

Mr. Katibeh is a participant in the Equity Acceleration Policy as described in the "Other Change in Control Provisions" section below.



*Sonalee Parekh*

We entered into an executive employment offer letter with Ms. Parekh, our CFO, dated April 26, 2022. The offer letter has no specific term and provides for at-will employment. The offer letter provides for an annual base salary of \$500,000 and an annual incentive bonus of up to 100% of Ms. Parekh's base salary. As a member of our executive team, the achieved portion of Ms. Parekh's annual incentive bonus will be paid in the form of fully-vested RSUs in accordance with the Key Employee Equity Bonus Plan.

Under the offer letter, Ms. Parekh received the following equity awards: (i) a time-based new hire award of 106,850 RSUs that vests as to 1/4th of the RSUs on May 20, 2023, and as to 1/16th of the RSUs every three months afterwards, in each case, subject to Ms. Parekh's continued service as of each vesting date; and (ii) a performance-based new hire award of 26,713 RSUs that vests according to the same vesting schedule as the time-based new hire award, except that if our board of directors establishes performance based metrics on or before the date of our release of first quarter 2023 earnings, the vesting of any portion of the performance-based new hire award scheduled to vest after May 20, 2023, will be contingent on the Company achieving such performance-based metrics.

In addition, Ms. Parekh also received a signing bonus in the form of fully-vested RSUs having an aggregate value of \$2,300,000, which was paid in two equal installments, each having an aggregate value of \$1,150,000 (with the first installment paid within seven days after she commenced her employment with us and the second installment paid in November 2022). The value of each installment of the signing bonus was converted into a number of RSUs based upon the average closing price of a share of our Class A Common Stock (as quoted on the New York Stock Exchange) during the first 15 consecutive calendar days of May 2022 and October 2022, respectively. Ms. Parekh will be required to reimburse us for the total amount of the signing bonus if, within two years from her start date, (i) she voluntarily terminates her employment, other than for "good reason" (as defined in the Equity Acceleration Policy), or (ii) we terminate her employment for "cause" (as defined in the offer letter), for failure to be primarily located in the San Francisco Bay Area by June 30, 2022, or for failure to relocate to the San Francisco Bay Area by August 31, 2022.

Under the offer letter, Ms. Parekh was also entitled to payment or reimbursement by us for expenses she reasonably incurred on or before November 30, 2022, in connection with her relocation to the San Francisco Bay Area, including (i) assistance in obtaining temporary housing for her and her family, including the reasonable cost of such temporary housing through November 30, 2022, and (ii) up to \$60,000 of other relocation and moving-related expenses (but excluding any costs or other expenses related to the sale or purchase of her permanent residence). The offer letter also entitled Ms. Parekh to reimbursement of up to \$5,000 of legal expenses related to the offer letter and affiliated documents.

If Ms. Parekh's employment is terminated by the Company without cause (including by reason of death or "disability" (as defined in the offer letter)) or she resigns for good reason, she will be eligible to receive the following payments and benefits if she timely signs and does not revoke a release agreement with us:

- cash severance equal to her then-current base salary for a period of (i) six months if such termination is by us other than for cause, death, or disability or by her for good reason or (ii) twelve months if such termination is by us due to her death or disability;
- reimbursement of COBRA premiums through the earlier of (i) the 12-month anniversary of the date of the termination of employment or (ii) the date on which Ms. Parekh or her eligible dependents, as applicable, cease to be eligible for COBRA continuation coverage, provided that if we determine that we cannot make these COBRA reimbursements without potentially violating applicable law, Ms. Parekh will instead receive a taxable lump sum payment of \$30,000 in lieu of such COBRA reimbursements; and
- the following equity award vesting acceleration benefit:
  - if such termination occurs during the period beginning 90 days prior to a "change of control" (as defined in the Equity Acceleration Policy) and ending 12 months following a change of control, then under the Equity Acceleration Policy, 100% acceleration of vesting of any of her then-outstanding and unvested equity awards subject to time-based vesting conditions, subject to the terms and conditions of the Equity Acceleration Policy, or
  - if such termination occurs outside of the period described in the previous bullet, acceleration of vesting of the portion of any of her then-outstanding and unvested equity awards subject to time based vesting conditions

that would have vested if she had remained employed with us through the date that is 6 months following her effective last day with us.

Ms. Parekh is a participant in the Equity Acceleration Policy as described in the “Other Change in Control Provisions” section below.

*John Marlow*

We entered into an executive employment offer letter with John Marlow, our current Chief Administrative Officer, Senior Vice President, Corporate Development, General Counsel and Secretary, dated September 13, 2013. The executive employment offer letter has no specific term and provides for at-will employment. In 2022, Mr. Marlow’s base salary was \$450,000, and he was eligible to earn an annual incentive bonus of up to approximately 100% of his base salary. As a member of our executive team, the achieved portion of Mr. Marlow’s annual incentive bonus will be paid in the form of fully-vested RSUs in accordance with the Key Employee Equity Bonus Plan.

In the event we terminate Mr. Marlow’s employment without “cause” (as such term is defined in his offer letter) and excluding by reason of death or disability, he is eligible to receive severance equal to three months of his base salary, payable in installments in accordance with our payroll procedures, subject to his signing and not revoking a release agreement with us.

Mr. Marlow is a participant in the Equity Acceleration Policy as described in the “Other Change in Control Provisions” section below.

*Vaibhav Agarwal*

We entered into an employment offer letter with Mr. Agarwal, our Chief Accounting Officer, dated June 21, 2016. The executive employment offer letter has no specific term and provides for at-will employment. In 2022, Mr. Agarwal’s base salary was \$500,000, and he was eligible to earn an annual incentive bonus of up to approximately 75% of his base salary. As a member of our executive team, the achieved portion of Mr. Agarwal’s annual incentive bonus will be paid in the form of fully-vested RSUs in accordance with the Key Employee Equity Bonus Plan. Mr. Agarwal also is a participant in the Equity Acceleration Policy, which is described in the “Other Change in Control Provisions” section below.

***Other Change in Control Provisions***

Our named executive officers are eligible to participate in our Equity Acceleration Policy. Pursuant to our Equity Acceleration Policy, on a termination of an eligible employee’s employment either (i) by the Company (or any of its subsidiaries) other than for “cause,” death, or “disability” or (ii) by the eligible employee for “good reason” (as such terms are defined in the Equity Acceleration Policy or individual participation agreement), in either case, during the period beginning 60 days prior to a “change of control” (as defined in the Equity Acceleration Policy) and ending 12 months following a change of control, then, subject to the eligible employee’s signing and not revoking a release, the then-unvested shares subject to each of the eligible employee’s then-outstanding equity awards will immediately vest and, in the case of equity awards that are stock options and stock appreciation rights, will become exercisable as to (A) in the cases of Mr. Shmunis, Ms. Parekh, and Mr. Marlow, 100% of his or her then-outstanding unvested equity awards (other than Ms. Parekh’s performance-based new hire award), or (B) in the cases of Messrs. Katibeh and Agarwal, 50% vesting acceleration of his then-outstanding unvested equity awards (other than the performance-based award Mr. Katibeh received in connection with his appointment as President), in each case subject to the terms and conditions of the Equity Acceleration Policy.

If any payment or benefit that an eligible employee would receive from the Company or any other party whether in connection with the Equity Acceleration Policy or otherwise would constitute a “parachute payment” within the meaning of Code Section 280G and could be subject to the related excise tax, the eligible employee would be entitled to receive either full payment of the payments and benefits under or such lesser amount which would result in no portion of the benefits being subject to the excise tax, whichever results in the greater amount of after-tax benefits to the eligible employee.

The provisions of the Equity Acceleration Policy superseded any double-trigger equity acceleration provisions of any offer letter, employment agreement or equity award.

In March 2020, our compensation committee determined that for the awards of RSUs granted to Mr. Shmunis, in the event of the termination without “cause”, termination “for good reason” (as such terms are defined in the Equity Acceleration Policy) or death or disability of Mr. Shmunis, the vesting of any awards of RSUs granted to him in fiscal 2020 that would have vested had he remained employed with the Company through the date that is 12 months following his effective last day with us

will be accelerated (other than in connection with a death or disability from high-risk activities such as skydiving or free climbing).

## **Other Compensation Policies**

### ***Equity Award Grant Policy***

Our equity award grant policy formalizes our process for granting equity-based awards. Under our equity award grant policy, our board of directors or the compensation committee may grant equity awards at any time. It is our policy to not time equity award grants in relation to the release of material non-public information. Under the policy, the compensation committee has delegated limited authority to a committee consisting of our CEO and a member of the compensation committee to grant equity awards to employees below the level of Vice President and certain other service providers other than the members of our board of directors.

### ***Compensation Recovery Policy***

Currently, we have not implemented a policy regarding retroactive adjustments to any cash or equity-based incentive compensation paid to our named executive officers and other employees where the payments were predicated upon the achievement of financial results that were subsequently the subject of a financial restatement. We intend to adopt a general compensation recovery, or clawback, policy covering our annual and long-term incentive award plans and arrangements once the SEC adopts final rules implementing the requirement of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

### ***Derivatives Trading, Hedging and Pledging Policy***

Pursuant to our insider trading policy, our employees, including the members of our executive team and the members of our board of directors, are prohibited from engaging in transactions involving derivative securities or otherwise that would hedge the risk of ownership of our equity securities and from pledging our equity securities as collateral for a loan.

## **Tax and Accounting Considerations**

### ***Tax Considerations***

We have not provided any of our named executive officers with a gross-up or other reimbursement for tax amounts the individual might pay pursuant to Code Sections 280G, 4999 or 409A. Code Sections 280G and 4999 provide that named executive officers, directors who hold significant stockholder interests and certain other service providers could be subject to significant additional taxes if they receive payments or benefits in connection with a change in control of our Company that exceeds certain limits, and that we or our successor could lose a deduction on the amounts subject to the additional tax. Code Section 409A also imposes significant taxes on the individual in the event that an executive officer, director or other service provider receives “deferred compensation” that does not meet the requirements of Code Section 409A.

Under Code Section 162(m), we are subject to limits on the deductibility of executive compensation. Deductible compensation is limited to \$1 million per year for the CEO and certain of our current and former highly compensated executive officers (collectively “covered employees”). While we cannot predict how the deductibility limit may impact our compensation program in future years, we intend to maintain an approach to executive compensation that strongly links pay to performance. In addition, although we have not adopted a formal policy regarding tax deductibility of compensation paid to our named executive officers, the compensation committee may consider tax deductibility under Code Section 162(m) as a factor in its compensation decisions.

### ***Accounting Considerations***

We take financial reporting implications into consideration in designing compensation plans and arrangements for the members of our executive team, other employees and members of our board of directors. These accounting considerations include ASC Topic 718, the standard which governs the accounting treatment of stock-based compensation awards.

## Compensation-Related Risk

Our board of directors is responsible for the oversight of our risk profile, including compensation-related risks. Our compensation committee monitors our compensation policies and practices as applied to our employees to ensure that these policies and practices do not encourage excessive and unnecessary risk-taking. In cooperation with management, our compensation committee reviewed our 2022 compensation programs. Our compensation committee believes the mix and design of the elements of such programs do not encourage our employees to assume excessive risks and accordingly are not reasonably likely to have a material adverse effect on our Company. We have designed our compensation programs to be balanced so that our employees are focused on both short-term and long-term financial and operational performance. In particular, the weighting towards long-term incentive compensation discourages short-term risk taking. Goals are appropriately set with targets that encourage growth in the business.

## Report of the Compensation Committee

*The following Report of the compensation committee shall not be deemed to be “soliciting material” and should not be deemed “filed” and shall not be deemed to be incorporated by reference in future filings with the SEC, except to the extent that the Company specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.*

The compensation committee has reviewed and discussed with management the Compensation Discussion and Analysis provided above. Based on its review and discussions, the compensation committee recommended to the board of directors that the Compensation Discussion and Analysis be included in this Annual Report on Form 10-K.

Respectfully submitted by the members of the compensation committee of the board of directors:

Allan Thygesen (Chair)  
Tarek Robbiati  
Robert Theis

## Summary Compensation Table

The following table provides information regarding the compensation of our named executive officers during fiscal 2022.

| Name and Principal Position   | Year | Salary (\$)  | Bonus (\$) | Stock Awards (\$) (1) | Non-Equity Incentive Plan Compensation (\$) (2) | All Other Compensation (\$) (3) | Total (\$) |
|---|------|--------------|------------|-----------------------|---|---------------------------------|------------|
| Vladimir Shmunis  | 2022 | 5,470 (4)    | —          | 19,288,954            | 517,280 (5)                                     | 373,493                         | 20,185,166 |
| Chief Executive Officer   | 2021 | 5,175        | —          | 18,439,095            | 776,713   | 828                             | 19,221,811 |
|   | 2020 | 4,800        | —          | 18,148,589            | 905,466   | 576                             | 19,059,431 |
| Mo Katibeh  | 2022 | 206,250 (6)  | —          | 20,373,657            | 563,000 (7)                                     | 214,322                         | 21,357,229 |
| President and Chief Operating Officer   | 2021 | —            | —          | —                     | —   | —                               | —          |
|   | 2020 | —            | —          | —                     | —   | —                               | —          |
| Sonalee Parekh  | 2022 | 147,500 (8)  | —          | 10,666,699            | 298,609 (9)                                     | 192,348                         | 11,305,156 |
| Chief Financial Officer   | 2021 | —            | —          | —                     | —   | —                               | —          |
|   | 2020 | —            | —          | —                     | —   | —                               | —          |
| John Marlow   | 2022 | 60,000 (10)  | —          | 6,010,755             | 422,193 (11)                                    | 134,826                         | 6,627,774  |
| Chief Administrative Officer, Senior Vice President, Corporate Development, General Counsel and Secretary | 2021 | 204,375      | —          | 12,006,768            | 416,753   | 45,828                          | 12,673,724 |
|   | 2020 | 375,000      | —          | 4,361,290             | 435,773   | 2,172,719                       | 7,344,782  |
| Vaibhav Agarwal   | 2022 | 135,000 (12) | —          | 11,102,334            | 360,414 (13)                                    | 576                             | 11,598,324 |
| Chief Accounting Officer and former interim Chief Financial Officer                                       | 2021 | 170,000      | —          | 4,580,059             | 203,560   | 576                             | 4,954,195  |
|   | 2020 | 300,000      | —          | 1,061,805             | 193,020   | 576                             | 1,555,401  |

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- (1) The amounts in the “Stock Awards” column represent the aggregate fair market value of RSUs granted in the applicable year and calculated in accordance with ASC Topic 718. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions. The assumptions used to calculate the value of equity awards are set forth under Note 10 of the Notes to Consolidated Financial Statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 filed with the SEC on March 1, 2022.
  - (2) Amounts in this column represent the aggregate fair market value of RSUs granted under our Key Employee Equity Bonus Plan, in lieu of a cash bonus earned for each quarter of 2020, 2021 and 2022, which is calculated in accordance with ASC Topic 718. These RSUs were fully vested upon grant.
  - (3) This column represents (i) the dollar value of the benefit to each named executive officer for the portion of the premium payable by the Company with respect to a life insurance policy, (ii) with respect to Mr. Shmunis, a Hart-Scott-Rodino filing fee paid by the Company on Mr. Shmunis’s behalf in the amount of \$125,000 and a tax gross-up for such payment in the amount of \$247,917; (iii) with respect to Mr. Katibeh and Ms. Parekh, relocation expenses of \$213,770 and \$191,988, respectively; and (iv) with respect to Mr. Marlow, a Hart-Scott-Rodino filing fee paid by the Company on Mr. Marlow’s behalf in the amount of \$45,000 and a tax gross-up for such payment in the amount of \$89,250.
  - (4) This amount represents the \$5,470 of cash salary actually paid to Mr. Shmunis in 2022. Mr. Shmunis received (i) an award of 2,178 RSUs in lieu of payment in cash of \$695,080 of his salary for the period from April 1, 2021 through March 31, 2022, and (ii) an award of 4,769 RSUs in lieu of payment in cash of \$494,530 of his salary for the period from April 1, 2022 through March 31, 2023, and this amount does not include the portion of this \$695,080 of salary attributable to the period from January 1, 2022 through March 31, 2022 and the portion of this \$494,530 of salary attributable to the period from April 1, 2022 through December 31, 2022.
  - (5) Consists of 11,158 RSUs that were fully vested upon grant, 10,226 of which were granted in fiscal 2022 and 932 of which were granted in fiscal 2023.
  - (6) This amount represents the \$206,250 of cash salary actually paid to Mr. Katibeh in 2022. Mr. Katibeh received (i) an award of 1,758 RSUs in lieu of payment in cash of \$110,000 of his salary for the period from May 16, 2022 through August 15, 2022, (ii) awards of 2,097 RSUs and 953 RSUs in lieu of payment in cash of \$110,000 and \$50,000 of his salary respectively for the period from August 16, 2022 through November 15, 2022, and (iii) awards of 1,320 RSUs and 300 RSUs in lieu of payment in cash of \$55,000 and \$12,500 of his salary, respectively for the period from November 16, 2022 through December 31, 2022.
  - (7) Consists of 11,248 RSUs that were fully vested upon grant, 8,389 of which were granted in fiscal 2022 and 2,859 of which were granted in fiscal 2023.
  - (8) This amount represents the \$147,500 of cash salary actually paid to Ms. Parekh in 2022. Ms. Parekh received (i) an award of 2,097 RSUs in lieu of payment in cash of \$110,000 of her salary for the period from August 16, 2022 through November 15, 2022, and (iii) an award of 1,320 RSUs in lieu of payment in cash of \$55,000 of her salary, respectively for the period from November 16, 2022 through December 31, 2022.
  - (9) Consists of 6,465 RSUs that were fully vested upon grant, 4,041 of which were granted in fiscal 2022 and 2,424 of which were granted in fiscal 2023.
  - (10) This amount represents the \$60,000 of cash salary actually paid to Mr. Marlow in 2022. Mr. Marlow received (i) an award of 205 RSUs in lieu of payment in cash of \$39,375 of his salary for the period from January 1, 2022 to February 15, 2022, (ii) an award of 455 RSUs in lieu of payment in cash of \$78,750 of his salary for the period from February 16, 2022 through May 15, 2022, (iii) an award of 1,708 RSUs in lieu of payment in cash of \$106,875 of his salary for the period from May 16, 2022 through August 15, 2022, (iv) an award of 1,858 RSUs in lieu of payment in cash of \$97,500 of his salary for the period from August 16, 2022 through November 15, 2022, and (v) an award of 1,170 RSUs in lieu of payment in cash of \$48,750 of his salary for the period from November 16, 2022 through December 31, 2022.
  - (11) Consists of 8,435 RSUs that were fully vested upon grant, 6,291 of which were granted in fiscal 2022 and 2,144 of which were granted in fiscal 2023.
  - (12) This amount represents the \$135,000 of cash salary actually paid to Mr. Agarwal in 2022. Mr. Agarwal received (i) an award of 139 RSUs in lieu of payment in cash of \$20,625 of his salary for the period from January 1, 2022 to February 15, 2022, (ii) an award of 251 RSUs in lieu of payment in cash of \$41,250 of his salary for the period from February 16, 2022 through May 15, 2022, (iii) an award of 2,091 RSUs in lieu of payment in cash of \$125,583 of his salary for the period from May 16, 2022 through August 15, 2022, (iv) an award of 1,826 RSUs in lieu of payment in cash of \$91,250 of his salary for the period from August 16, 2022 through November 15, 2022, and (v) an award of 1,150 RSUs in lieu of payment in cash of \$45,625 of his salary for the period from November 16, 2022 through December 31, 2022, in each case, such awards reflected a five percent premium on the underlying cash amount.
  - (13) Consists of 7,389 RSUs that were fully vested upon grant, 5,306 of which were granted in fiscal 2022 and 2,083 of which were granted in fiscal 2023.

**Grants of Plan-Based Awards in 2022**

The following table sets forth information regarding grants of awards made to our named executive officers during fiscal 2022. We did not grant any cash awards under our 2013 Plan during fiscal 2022.

| Name             | Grant Date | Name of Plan | Equity Grants  |   |
|------------------|------------|--------------|--|---|
|                  |            |              | Number of Securities Underlying Restricted Stock Units (#) | Grant Date Fair Value of Stock Awards (\$)(1) |
| Vladimir Shmunis | 11/20/2022 | 2013 Plan    | 3,529  | 126,303                                       |
|                  | 8/20/2022  | 2013 Plan    | 3,842  | 172,659                                       |
|                  | 5/20/2022  | 2013 Plan    | 2,855  | 183,862                                       |
|                  | 5/2/2022   | 2013 Plan    | 4,769  | 416,000                                       |
|                  | 4/1/2022   | 2013 Plan    | 155,756  | 18,872,955                                    |
|                  | 2/20/2022  | 2013 Plan    | 1,434  | 211,716                                       |
| Mo Katibeh       | 11/15/2022 | 2013 Plan    | 1,320  | 55,004  |
|                  | 11/15/2022 | 2013 Plan    | 300  | 12,501  |
|                  | 11/15/2022 | 2013 Plan    | 3,420  | 142,511                                       |
|                  | 8/15/2022  | 2013 Plan    | 2,097  | 110,051                                       |
|                  | 8/15/2022  | 2013 Plan    | 953  | 50,013  |
|                  | 8/15/2022  | 2013 Plan    | 2,859  | 150,040                                       |
|                  | 5/30/2022  | 2013 Plan    | 26,713   | 1,686,659                                     |
|                  | 5/30/2022  | 2013 Plan    | 26,713   | 1,686,659                                     |
|                  | 5/16/2022  | 2013 Plan    | 1,758  | 110,016                                       |
|                  | 5/16/2022  | 2013 Plan    | 2,110  | 132,044                                       |
|                  | 5/1/2022   | 2013 Plan    | 4,822  | 420,623                                       |
|                  | 3/14/2022  | 2013 Plan    | 35,997   | 3,587,101                                     |
|                  | 2/1/2022   | 2013 Plan    | 69,279   | 12,148,765                                    |
| 2/1/2022         | 2013 Plan  | 2,887        | 506,264  |   |
| Sonalee Parekh   | 11/20/2022 | 2013 Plan    | 30,697   | 1,098,646                                     |
|                  | 11/15/2022 | 2013 Plan    | 1,320  | 55,004  |
|                  | 11/15/2022 | 2013 Plan    | 2,850  | 118,760                                       |
|                  | 8/15/2022  | 2013 Plan    | 2,097  | 110,051                                       |
|                  | 8/15/2022  | 2013 Plan    | 1,191  | 62,504  |
|                  | 5/30/2022  | 2013 Plan    | 106,850  | 6,746,509                                     |
|                  | 5/30/2022  | 2013 Plan    | 26,713   | 1,686,659                                     |
|                  | 5/30/2022  | 2013 Plan    | 15,360   | 969,830                                       |
| John Marlow      | 11/15/2022 | 2013 Plan    | 1,170  | 48,754  |
|                  | 11/15/2022 | 2013 Plan    | 2,565  | 106,884                                       |
|                  | 8/15/2022  | 2013 Plan    | 1,858  | 97,508  |
|                  | 8/15/2022  | 2013 Plan    | 2,144  | 112,517                                       |
|                  | 5/16/2022  | 2013 Plan    | 1,708  | 106,887                                       |
|                  | 5/16/2022  | 2013 Plan    | 1,582  | 99,002  |
|                  | 3/14/2022  | 2013 Plan    | 51,919   | 5,173,728                                     |
|                  | 3/14/2022  | 2013 Plan    | 4,673  | 465,664                                       |
|                  | 2/15/2022  | 2013 Plan    | 455  | 78,770  |
|                  | 2/15/2022  | 2013 Plan    | 652  | 112,874                                       |
|                  | 1/3/2022   | 2013 Plan    | 205  | 39,444  |
| Vaibhav Agarwal  | 11/15/2022 | 2013 Plan    | 1,150  | 47,921  |

|  |            |           |            |           |
|--|------------|-----------|------------|-----------|
|  | 11/15/2022 | 2013 Plan | 2,469      | 102,883   |
|  | 9/16/2022  | 2013 Plan | 41,984     | 1,778,442 |
|  | 8/15/2022  | 2013 Plan | 1,826      | 95,828    |
|  | 8/15/2022  | 2013 Plan | 2,064      | 108,319   |
|  | 7/25/2022  | 2013 Plan | 35,175 (2) | 1,906,133 |
|  | 5/16/2022  | 2013 Plan | 2,091      | 130,855   |
|  | 5/16/2022  | 2013 Plan | 773        | 48,374    |
|  | 3/14/2022  | 2013 Plan | 69,225     | 6,898,271 |
|  | 3/14/2022  | 2013 Plan | 1,753      | 174,686   |
|  | 2/15/2022  | 2013 Plan | 251        | 43,453    |
|  | 2/15/2022  | 2013 Plan | 319        | 55,225    |
|  | 1/3/2022   | 2013 Plan | 139        | 26,745    |

(1) The amounts in the “Grant Date Fair Value of Stock Awards” column represent the grant date fair market value of RSUs and PSUs granted in fiscal 2022 and calculated in accordance with ASC Topic 718. The assumptions used to calculate the value of equity awards are set forth under Note 10 of the Notes to Consolidated Financial Statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 filed with the SEC on March 1, 2022.

(2) This equity award was canceled and replaced in September 2022.

### Outstanding Equity Awards at Fiscal Year-End

The following table presents information concerning equity awards held by our named executive officers at the end of fiscal 2022.

| Name             | Grant Date | Option Awards   |               |   | Option Exercise Price (\$) | Option Expiration Date | Stock Awards  |  |
|------------------|------------|---|---------------|---|----------------------------|------------------------|---|--|
|                  |            | Number of Securities Underlying Unexercised Options (#) |               | Number of Shares or Units of Stock that Have Not Vested (#) |                            |                        | Market Value of Shares or Units of Stock that Have Not Vested \$(1) |  |
|                  |            | Exercisable   | Unexercisable |   |                            |                        |   |  |
| Vladimir Shmunis | 4/24/2019  | —   | —             | —   | —                          | 4,476 (2)              | 158,450   |  |
|                  | 4/1/2020   | —   | —             | —   | —                          | 25,878 (3)             | 916,081   |  |
|                  | 5/1/2021   | —   | —             | —   | —                          | 31,723 (4)             | 1,122,994   |  |
|                  | 4/1/2022   | —   | —             | —   | —                          | 116,818 (5)            | 4,135,357   |  |
|                  | 5/2/2022   | —   | —             | —   | —                          | 2,385 (6)              | 84,429  |  |
| Mo Katibeh       | 2/1/2022   | —   | —             | —   | —                          | 60,620 (7)             | 2,145,948   |  |
|                  | 3/14/2022  | —   | —             | —   | —                          | 26,999 (8)             | 955,765   |  |
|                  | 5/30/2022  | —   | —             | —   | —                          | 26,713 (9)             | 945,640   |  |
|                  | 5/30/2022  | —   | —             | —   | —                          | 26,713 (10)            | 945,640   |  |
| Sonalee Parekh   | 5/30/2022  | —   | —             | —   | —                          | 26,713 (11)            | 945,640   |  |
|                  | 5/30/2022  | —   | —             | —   | —                          | 106,850 (12)           | 3,782,490   |  |
| John Marlow      | 4/24/2019  | —   | —             | —   | —                          | 1,107 (13)             | 39,188  |  |
|                  | 4/1/2020   | —   | —             | —   | —                          | 6,470 (14)             | 229,038   |  |
|                  | 5/1/2021   | —   | —             | —   | —                          | 21,149 (15)            | 748,675   |  |
|                  | 3/14/2022  | —   | —             | —   | —                          | 38,940 (16)            | 1,378,476   |  |
|                  | 3/14/2022  | —   | —             | —   | —                          | 1,169 (17)             | 41,383  |  |
| Vaibhav Agarwal  | 4/2/2019   | —   | —             | —   | —                          | 281 (18)               | 9,947   |  |
|                  | 4/9/2020   | —   | —             | —   | —                          | 1,618 (19)             | 57,277  |  |

|           |   |   |   |   |             |           |
|-----------|---|---|---|---|-------------|-----------|
| 5/1/2021  | — | — | — | — | 7,931 (20)  | 280,757   |
| 3/14/2022 | — | — | — | — | 51,919 (21) | 1,837,933 |
| 3/14/2022 | — | — | — | — | 439 (22)    | 15,541    |
| 9/16/2022 | — | — | — | — | 31,488 (23) | 1,114,675 |

- (1) This amount reflects the closing price of our Class A Common Stock on December 30, 2022 (which was \$35.40), multiplied by the amount shown in the column for Number of Shares or Units of Stock That Have Not Vested.
- (2) The shares underlying this RSU award vest, subject to Mr. Shmunis's continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2019. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (3) The shares underlying this RSU award vest, subject to Mr. Shmunis's continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2020. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (4) The shares underlying this RSU award vest, subject to Mr. Shmunis's continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2021. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (5) The shares underlying this RSU award vest, subject to Mr. Shmunis's continued role as a service provider to us, with 1/8 vesting on May 20, 2022 and 1/16 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (6) The shares underlying this RSU award vest, subject to Mr. Shmunis's continued role as a service provider to us, in four equal quarterly installments commencing August 20, 2022. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (7) The shares underlying this RSU award vest, subject to Mr. Katibeh's continued role as a service provider to us, with 1/8 vesting on each of August 20, 2022 and February 20, 2023, and 1/16 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (8) The shares underlying this RSU award vest, subject to Mr. Katibeh's continued role as a service provider to us, with 1/8 vesting on May 20, 2022 and 1/16 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (9) This RSU award vests, subject to Mr. Katibeh's continued role as a service provider to us, as to 1/4 of the underlying shares on February 20, 2023 and as to 1/16 of the underlying shares each quarter thereafter; provided, however, that if our board of directors establishes performance based metrics on or before the date of our release of first quarter 2023 earnings, the vesting of any portion of the award scheduled to vest after February 20, 2023, will be contingent on the Company achieving such performance-based metrics.
- (10) The shares underlying this RSU award vest, subject to Mr. Katibeh's continued role as a service provider to us, with 1/4 vesting on February 20, 2023 and 1/16 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (11) This RSU award vests, subject to Ms. Parekh's continued role as a service provider to us, as to 1/4 of the underlying shares on May 20, 2023 and as to 1/16 of the underlying shares each quarter thereafter; provided, however, that if our board of directors establishes performance based metrics on or before the date of our release of first quarter 2023 earnings, the vesting of any portion of the award scheduled to vest after May 20, 2023, will be contingent on the Company achieving such performance-based metrics.
- (12) The shares underlying this RSU award vest, subject to Ms. Parekh's continued role as a service provider to us, with 1/4 vesting on May 20, 2023 and 1/16 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (13) The shares underlying this RSU award vest, subject to Mr. Marlow's continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2019. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (14) The shares underlying this RSU award vest, subject to Mr. Marlow's continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2020. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (15) The shares underlying this RSU award vest, subject to Mr. Marlow's continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2021. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (16) The shares underlying this RSU award vest, subject to Mr. Marlow's continued role as a service provider to us, with 1/8 vesting on May 20, 2022 and 1/16 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (17) The shares underlying this RSU award vest, subject to Mr. Marlow's continued role as a service provider to us, in four equal quarterly installments commencing May 20, 2022. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.



- (18) The shares underlying this RSU award vest, subject to Mr. Agarwal’s continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2019. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (19) The shares underlying this RSU award vest, subject to Mr. Agarwal’s continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2020. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (20) The shares underlying this RSU award vest, subject to Mr. Agarwal’s continued role as a service provider to us, in 16 equal quarterly installments commencing May 20, 2021. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (21) The shares underlying this RSU award vest, subject to Mr. Agarwal’s continued role as a service provider to us, with 1/8 vesting on May 20, 2022 and 1/16 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (22) The shares underlying this RSU award vest, subject to Mr. Agarwal’s continued role as a service provider to us, in four equal quarterly installments commencing May 20, 2022. 100% of the shares underlying this RSU award are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.
- (23) The shares underlying this RSU award vest, subject to Mr. Agarwal’s continued role as a service provider to us, with 1/4 vesting on November 20, 2022 and 1/8 vesting each quarter thereafter. 100% of these RSU awards are subject to accelerated vesting in the event of termination of employment under certain circumstances in connection with a change of control of the Company.

### Option Exercises and Stock Vested in 2022

The following table sets forth the number of shares of common stock acquired during fiscal 2022 by our named executive officers upon the exercise of stock options and the vesting of RSU awards and the value realized upon such exercise or vesting.

| Name             | Option Awards                                  |                                  | Stock Awards                                  |                                 |
|------------------|--|----------------------------------|---|---------------------------------|
|                  | Number of Securities Acquired on Exercise #(1) | Value Realized on Exercise \$(2) | Number of Securities Acquired on Vesting #(3) | Value Realized on Vesting \$(4) |
| Vladimir Shmunis | —  | —                                | 113,343                                       | 7,773,365                       |
| Mo Katibeh       | —  | —                                | 40,183  | 2,359,423                       |
| Sonalee Parekh   | —  | —                                | 53,515  | 2,414,794                       |
| John Marlow      | 10,487   | 1,062,632                        | 49,430  | 3,280,054                       |
| Vaibhav Agarwal  | —  | —                                | 46,470  | 2,489,119                       |

- (1) Reflects the aggregate number of shares of Class A Common Stock underlying the stock options that were exercised during fiscal 2022.
- (2) Calculated by multiplying (i) the difference between (x) the sale price for shares of Class A Common Stock sold concurrently with the exercise of an option, and if not, the fair market value of Class A Common Stock on the option exercise date, which was determined using the closing price on the NYSE of a share of Class A Common Stock on the option exercise date, and (y) the exercise price of the option, by (ii) the number of shares of Class A Common Stock acquired upon exercise.
- (3) Reflects the aggregate number of shares of common stock underlying the RSU awards that vested in fiscal 2022.
- (4) Calculated based by multiplying (i) the fair market value of Class A Common Stock on the vesting date, which was determined using the closing price on the NYSE of a share of Class A Common Stock on vesting date, by (ii) the number of shares of Class A Common Stock acquired upon vesting.

### Pension Benefits

Aside from our 401(k) plan, we do not maintain any pension plan or arrangement under which our named executive officers are entitled to participate or receive post-retirement benefits.

### Non-Qualified Deferred Compensation

We do not maintain any nonqualified deferred compensation plans or arrangements under which our named executive officers are entitled to participate.

**Hedging Policy**

Pursuant to our Insider Trading Policy, our directors, officers (as defined in Rule 16a-1(f) of the Exchange Act) and other employees subject to blackout periods or pre-clearance requirements under such policy are prohibited from engaging in transactions in publicly-traded options, such as puts and calls, and other derivative securities with respect to the Company's securities, including hedging their ownership of Company securities or similar transactions designed to decrease the risks associated with holding Company securities. Stock options, stock appreciation rights and other securities issued pursuant to our benefit plans or other compensatory arrangements with us are not subject to this prohibition.

**Potential Payments upon Termination and upon Termination in Connection with a Change of Control*****Potential Payments upon Termination Apart from a Change of Control***

The following table sets forth quantitative estimates of the benefits that would have accrued to each of our named executive officers pursuant to his or her employment letter, if (i) the named executive officer experiences a qualifying termination of his or her employment (as described in the "Executive Compensation—Compensation Discussion and Analysis—Post-Employment Compensation—Executive Employment Arrangements" section above), on December 31, 2022, and outside of the period beginning 60 days (or (A) in the case of Mr. Shmunis, three months, or (B) in the cases of Mr. Katibeh and Ms. Parekh, 90 days) prior to and ending 12 months following a "change of control" (as defined in our Equity Acceleration Policy) and (ii) such named executive officer signs and does not revoke a release agreement with us.

|                      | Cash Severance \$(1) | Value of Accelerated Equity Awards \$(2) | Continuing Health Coverage \$(3) | Total (\$) |
|----------------------|----------------------|--|----------------------------------|------------|
| Vladimir Shmunis (4) | 500,000              | —  | 22,449                           | 522,449    |
| Mo Katibeh (5)       | 600,000              | 914,630                                  | 32,014                           | 1,546,644  |
| Sonalee Parekh (6)   | 500,000              | 945,065                                  | 29,771                           | 1,474,836  |
| John Marlow (7)      | 112,500              | —  | —                                | 112,500    |
| Vaibhav Agarwal      | —                    | —  | —                                | —          |

(1) Represents the portion of each named executive officer's base salary to be paid to such named executive officer upon a termination apart from a change of control.

(2) For each named executive officer, the estimated value of accelerated equity awards was calculated by multiplying (x) the amount of unvested RSUs subject to acceleration held by the applicable named executive officer and (y) the closing price of our Class A Common Stock on December 30, 2022 (which was \$35.40).

(3) Represents the value of the COBRA premium reimbursements to be provided to such named executive officer upon a termination apart from a change of control.

(4) Mr. Shmunis will receive (i) 12 months of his base salary and (ii) reimbursement of his COBRA premiums for up to 12 months, in accordance with his executive employment letter.

(5) Mr. Katibeh will receive (i) his base salary for (A) six months if his termination is by us other than for cause, death, or disability or by him for good reason or (B) 12 months if such termination is by us due to his death or disability; (ii) 100% vesting of his then-outstanding and unvested time-based equity that would have vested had he remained employed with the Company through the date that is six months following his effective last day with the Company, and (iii) reimbursement of COBRA premiums for up to 12 months, in accordance with his executive employment offer letter. The amount of cash severance listed in the table above reflects Mr. Katibeh's receipt of 12 months of his base salary upon a termination by us due to his death or disability. If his termination is by us other than for cause, death, or disability or by him for good reason, such amount would be \$300,000 instead.

(6) Ms. Parekh will receive (i) her base salary for (A) six months if her termination is by us other than for cause, death, or disability or by her for good reason or (B) 12 months if such termination is by us due to her death or disability; (ii) 100% vesting of her then-outstanding and unvested time-based equity that would have vested had she remained employed with the Company through the date that is six months following her effective last day with the Company, and (iii) reimbursement of COBRA premiums for up to 12 months, in accordance with her executive employment offer letter. The amount of cash severance listed in the table above reflects Ms. Parekh's receipt of 12 months of her base salary upon a termination by us due to her death or disability. If her termination is by us other than for cause, death, or disability or by him for good reason, such amount would be \$250,000 instead.

(7) Mr. Marlow will receive three months of his base salary, in accordance with his offer letter.

**Potential Payments upon Termination in Connection with a Change of Control**

The following table sets forth quantitative estimates of the benefits that would have accrued to each of our named executive officers pursuant to his or her employment letter and Equity Acceleration Policy, if (i) the named executive officer experiences a qualifying termination of his or her employment (as described in the “Executive Employment Arrangements” and “Other Change in Control Provisions” subsections of the “Executive Compensation—Compensation Discussion and Analysis—Post-Employment Compensation” section above) on December 31, 2022, and within the period beginning 60 days (or (A) in the case of Mr. Shmunis, three months, or (B) in the cases of Mr. Katibeh and Ms. Parekh, 90 days) prior to or 12 months following a “change of control” (as defined in our Equity Acceleration Policy) and (ii) such named executive officer signs and does not revoke a release agreement with us.

|                      | Cash Severance \$(1) | Value of Accelerated Equity Awards \$(2) | Continuing Health Coverage \$(3) | Total (\$) |
|----------------------|----------------------|--|----------------------------------|------------|
| Vladimir Shmunis (4) | 1,500,000            | 6,417,312                                | 33,674                           | 7,950,986  |
| Mo Katibeh (5)       | 600,000              | 2,023,676                                | 32,014                           | 2,655,690  |
| Sonalee Parekh (6)   | 500,000              | 3,782,490                                | 29,771                           | 4,312,261  |
| John Marlow (7)      | 112,500              | 2,436,759                                | —                                | 2,549,259  |
| Vaibhav Agarwal (8)  | —                    | 1,658,065                                | —                                | 1,658,065  |

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- (1) Represents the portion of each named executive officer’s (a) base salary and (b) 2022 target bonus, as applicable to be paid to such named executive officer upon a termination in connection with a change of control.
  - (2) For each named executive officer, the estimated value of accelerated equity awards was calculated by multiplying (x) the amount of unvested RSUs subject to acceleration held by the applicable named executive officer and (y) the closing price of our Class A Common Stock on December 30, 2022 (which was \$35.40).
  - (3) Represents the value of the COBRA premium reimbursements to be provided to such named executive officer upon a termination in connection with a change of control.
  - (4) Mr. Shmunis will receive (i) 18 months of his base salary plus 150% his 2022 target bonus, (ii) 100% acceleration of his outstanding equity awards and (iii) reimbursement of his COBRA premiums for up to 18 months, in accordance with his executive employment letter and the Equity Acceleration Policy.
  - (5) Mr. Katibeh will receive (i) his base salary for (A) six months if his termination is by us other than for cause, death, or disability or by him for good reason or (B) 12 months if such termination is by us due to his death or disability, (ii) 50% acceleration of his outstanding equity awards (other than the performance-based award he received in connection with his appointment as President) and (iii) reimbursement of COBRA premiums for up to 12 months, in accordance with his executive employment offer letter and the Equity Acceleration Policy. The amount of cash severance listed in the table above reflects Mr. Katibeh’s receipt of 12 months of his base salary upon a termination by us due to his death or disability. If his termination is by us other than for cause, death, or disability or by him for good reason, such amount would be \$300,000 instead.
  - (6) Ms. Parekh will receive (i) her base salary for (A) six months if her termination is by us other than for cause, death, or disability or by her for good reason or (B) 12 months if such termination is by us due to her death or disability, (ii) 100% acceleration of her outstanding equity awards (other than her performance-based new hire award) and (iii) reimbursement of COBRA premiums for up to 12 months, in accordance with her executive employment offer letter and the Equity Acceleration Policy. The amount of cash severance listed in the table above reflects Ms. Parekh’s receipt of 12 months of her base salary upon a termination by us due to her death or disability. If her termination is by us other than for cause, death, or disability or by him for good reason, such amount would be \$250,000 instead.
  - (7) Mr. Marlow will receive (i) three months of his base salary and (ii) 100% acceleration of his outstanding equity awards, in accordance with his offer letter and the Equity Acceleration Policy.
  - (8) Mr. Agarwal will receive 50% acceleration of his outstanding equity awards pursuant to the Equity Acceleration Policy.

**CEO Pay Ratio**

Under SEC rules, we are required to provide information regarding the relationship between the total annual compensation of Mr. Shmunis, our Chief Executive Officer, and the total annual compensation of our median employee (other than Mr. Shmunis). For our last completed fiscal year, which ended December 31, 2022:

- The median of the total annual compensation of all employees (other than Mr. Shmunis) of ours (including our consolidated subsidiaries) was \$123,112.

- Mr. Shmunis's total annual compensation, as reported in the Summary Compensation Table included in this Annual Report on Form 10-K, was \$.
- Based on the above, for fiscal 2022, the ratio of Mr. Shmunis's total annual compensation to the median of the total annual compensation of all employees was 164 to 1.

This pay ratio is a reasonable estimate calculated in a manner consistent with Item 402(u) of Regulation S-K under the Securities Act and based upon our reasonable judgment and assumptions. The SEC rules do not specify a single methodology for identification of the median employee or calculation of the pay ratio, and other companies may use assumptions and methodologies that are different from those used by us in calculating their pay ratio. Accordingly, the pay ratio disclosed by other companies may not be comparable to our pay ratio as disclosed above.

The methodology we used to calculate the pay ratio is described below.

- We determined the median of the total annual compensation of all of our employees as of December 31, 2022. As of December 31, 2022, we (including our consolidated subsidiaries) had approximately 3,891 full-time, part-time and temporary employees, approximately 2,399 out of the 3,891 (or approximately 61.7%) are U.S. employees, and approximately 1,492 out of the 3,891 (or approximately 38.3%) are located outside of the United States.
- We then compared the sum of (i) the total annual cash compensation earned by each of these employees for fiscal 2022 as reflected in our payroll records plus (ii) the fair value of equity awards (as determined in accordance with footnote 1 of the fiscal Summary Compensation Table) granted to these employees in fiscal 2022, to determine the median employee, without annualizing the compensation of any employees who started their employment with us in fiscal 2022 but did not work for us or our consolidated subsidiaries for the entire year. Compensation paid in foreign currency was converted to U.S. dollars using currency conversion ratios in effect as of January 1, 2023. In determining the median total compensation of all of these employees, we did not make any cost of living adjustments to the wages paid to any employee outside of the U.S.

Once we identified our median employee, we estimated the median employee's total annual compensation in accordance with the requirements of Item 402(c)(2)(x) of Regulation S-K, yielding the median total annual compensation disclosed above. With respect to Mr. Shmunis's total annual compensation, we used the amount reported in the "Total" column of our fiscal Summary Compensation Table included in this Annual Report on Form 10-K.

## **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The following table sets forth certain information with respect to the beneficial ownership of our Class A common stock and Class B common stock as of January 31, 2023, for:

- each of our named executive officers;
- each of our directors;
- all of our directors and current executive officers as a group; and
- each person, or group of affiliated persons, known by us to be the beneficial owner of more than five percent of any class of our voting securities.

We have determined beneficial ownership in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Unless otherwise indicated in the footnotes below, we believe, based on the information furnished to us, that persons and entities named in the table have sole voting and sole investment power with respect to all shares that they beneficially owned, subject to community property laws where applicable.

We have deemed shares of our common stock subject to options that are currently exercisable or exercisable within 60 days of January 31, 2023, and shares issuable upon the vesting of RSUs within 60 days of January 31, 2023, to be outstanding and to be beneficially owned by the person holding the option or the RSUs, respectively, for the purpose of computing the percentage ownership of that person. However, we have not treated such shares as outstanding for the purpose of computing the percentage ownership of any other person. We have based percentage ownership of our common stock on 85,621,557 shares of our Class A common stock and 9,924,538 shares of our Class B common stock outstanding as of January 31, 2023. Unless

otherwise indicated, the address of each beneficial owner listed in the table below is c/o RingCentral, Inc., 20 Davis Drive, Belmont, California 94002.

|   | Class A    |      | Class B   |      | % of Total Voting Power † |
|---|------------|------|-----------|------|---------------------------|
|   | Shares     | %    | Shares    | %    |                           |
| <b>5% Stockholders:</b>   |            |      |           |      |                           |
| Entities affiliated with Vladimir Shmunis (1)                             | 224,667    | *    | 5,471,618 | 55.1 | 29.7                      |
| Entities affiliated with Vlad Vendrow (2)                                 | 161,329    | *    | 2,970,295 | 29.9 | 16.2                      |
| Capital World Investors (3)   | 12,964,077 | 15.1 | —         | *    | 7.0                       |
| Vanguard Group Inc.(4)  | 9,747,692  | 11.4 | —         | *    | 5.3                       |
| BlackRock, Inc. (5)   | 6,278,715  | 7.3  | —         | *    | 3.4                       |
| Alkeon Capital Management, LLC (6)  | 4,802,188  | 5.6  | —         | *    | 2.6                       |
| <b>Named Executive Officers, Directors:</b>                               |            |      |           |      |                           |
| Vladimir Shmunis (1)  | 224,667    | *    | 5,471,618 | 55.1 | 29.7                      |
| Mohammed Katibeh (7)  | 31,473     | *    | —         | *    | *                         |
| Sonalee Parekh (8)  | 18,173     | *    | —         | *    | *                         |
| John Marlow (9)   | 158,621    | *    | 273,714   | 2.8  | 1.6                       |
| Vaibhav Agarwal (10)  | 16,888     | *    | —         | *    | *                         |
| Mignon Clyburn (11)   | 1,478      | *    | —         | *    | *                         |
| Arne Duncan (12)  | 1,201      | *    | —         | *    | *                         |
| Kenneth Goldman (13)  | 11,757     | *    | —         | *    | *                         |
| Tarek Robbiati  | —          | —    | —         | —    | —                         |
| Sridhar Srinivasan (14)   | —          | —    | —         | —    | —                         |
| Robert Theis (15)   | 21,005     | *    | —         | *    | *                         |
| Allan Thygesen (16)   | 13,238     | *    | —         | *    | *                         |
| Neil Williams (17)  | 11,962     | *    | —         | *    | *                         |
| All current executive officers and directors as a group (13 persons) (18) | 510,463    | *    | 5,745,332 | 57.9 | 31.4                      |

(†) Represents the voting power with respect to all shares of our Class A common stock and Class B common stock, voting as a single class. Each share of Class A common stock is entitled to one vote per share and each share of Class B common stock is entitled to 10 votes per share. The Class A common stock and Class B common stock vote together on all matters (including the election of directors) submitted to a vote of stockholders, except as may be otherwise required by applicable law.

(\*) Represents beneficial ownership of less than 1%.

(1) Consists of (i) 59,895 shares of Class A common stock held of record by Mr. Shmunis (ii) 3,457,107 shares of Class B common stock held of record by ELCA Fund I, L.P. (“ELCA I”); (iii) 5,926 shares of Class B common stock held of record by ELCA Fund II, L.P. (“ELCA II”); (iv) 5,926 shares of Class B common stock held of record by ELCA Fund III, L.P. (“ELCA III”); (v) 1,385 shares of Class B common stock held of record by ELCA, LLC (collectively, along with ELCA I, ELCA II and ELCA III, the “ELCA Funds”); (vi) 1,274 shares of Class B common stock held of record by Vladimir G. Shmunis & Sandra Shmunis TR UA June 9, 1998 Shmunis Revocable Trust (“Trust”); (vii) 1,000,000 shares of Class B common stock held of record by Sandra Shmunis TR UA 03/11/2022 Sandra Shmunis 2022 Grantor Retained Annuity Trust (“SST”); (viii) 1,000,000 shares of Class B common stock held of record by Vladimir Shmunis TR UA 03/11/2022 Vladimir Shmunis 2022 Grantor Retained Annuity Trust (“VST”); (ix) 81,668 shares of Class A common stock held of record by Vladimir G Shmunis & Sandra Shmunis TR So Inclined Philanthropic Foundation (“SIPF”); (x) 59,000 shares of Class A common stock held of record by The Shmunis Family Generations Trust under agreement, dated December 29, 2020 (“SFGT”) and (xi) 24,104 shares of Class A common stock issuable pursuant to stock awards releasable within 60 days of January 31, 2023. Vladimir Shmunis, our CEO and Chairman of the board of directors, and Sandra Shmunis, Mr. Shmunis’s wife, are the managing members of ELCA, LLC. ELCA, LLC is the general partner of ELCA I, ELCA II and ELCA III. Mr. Shmunis and Mrs. Shmunis are the trustees of Trust and SIPF, and the investment trustees of SFGT. As a result, and by virtue of the relationships described in this footnote, Mr. and Mrs. Shmunis may be deemed to share voting and dispositive power with respect to the shares held by ELCA I, Trust, SIPF and SFGT, and certain of the shares held by ELCA II and ELCA III. As sole trustee of SST, Mrs. Shmunis may be deemed to hold voting and dispositive power with respect to the shares held by SST. As sole trustee of VST, Mr. Shmunis may be deemed to hold voting and

- dispositive power with respect to the shares held by VST. The address for these entities is c/o RingCentral, Inc., 20 Davis Drive, Belmont, California 94002.
- (2) Consists of (i) 125,867 shares of Class A common stock held of record by Mr. Vendrow; (ii) 26,035 shares of Class A common stock held of record by The Vlad Vendrow Trust dated February 13, 2020 (the “Vendrow 2020 Trust”); (iii) 1,040,365 shares of Class B common stock held of record by the Vendrow 2020 Trust; (iv) 1,890 shares of Class A common stock held of record by the Regina Vendrow TR UA 10/30/2015 2015 Vendrow Children’s Trust FBO David G Vendrow; (v) 1,890 shares of Class A common stock held of record by the Regina Vendrow TR UA 10/30/2015 2015 Vendrow Children’s Trust FBO Edward B Vendrow; (vi) 1,890 shares of Class A common stock held of record by the Regina Vendrow TR UA 10/30/2015 2015 Vendrow Children’s Trust FBO Joshua L Vendrow; (vii) 157,110 shares of Class B common stock held of record by the Regina Vendrow TR UA 10/30/2015 2015 Vendrow Children’s Trust FBO David G Vendrow; (viii) 157,110 shares of Class B common stock held of record by the Regina Vendrow TR UA 10/30/2015 2015 Vendrow Children’s Trust FBO Edward B Vendrow; (ix) 157,110 shares of Class B common stock held of record by the Regina Vendrow TR UA 10/30/2015 2015 Vendrow Children’s Trust FBO Joshua L Vendrow; (x) 38,600 shares of Class B common stock held of record by the Regina Vendrow TR UA 12/01/2020 Viva Children’s Trust; (xi) 420,000 shares of Class B common stock held of record by Viva Investment Capital LLC; (xii) 1,000,000 shares of Class B common stock held of record by Viva Investment Capital II LLC; and (xiii) 3,757 shares of Class A common stock issuable pursuant to stock awards releasable within 60 days of January 31, 2023. As sole trustee of the Vendrow 2020 Trust, Mr. Vendrow may be deemed to hold voting and dispositive power with respect to the shares held by him and by his children and his children’s trusts. As the sole owner of Viva Investment Capital LLC and Viva Investment Capital II LLC, Mr. Vendrow may be deemed to hold voting and dispositive power with respect to the shares held thereby. The address for these entities is c/o RingCentral, Inc., 20 Davis Drive, Belmont, California 94002.
  - (3) Based on information reported by Capital World Investors (“CWI”) on its most recent Schedule 13G/A filed with the SEC on February 13, 2023. Of the shares of Class A common stock beneficially owned, CWI reported that it has sole dispositive power and sole voting power with respect to 12,964,077 shares. CWI is a division of Capital Research and Management Company (“CRMC”), as well as its investment management subsidiaries and affiliates Capital Bank and Trust Company, Capital International, Inc., Capital International Limited, Capital International Sarl, Capital International K.K., Capital Group Private Client Services, Inc., and Capital Group Investment Management Private Limited. CWI’s divisions of each of the investment management entities collectively provide investment management services under the name “Capital World Investors.” The address for CWI is 333 South Hope Street, Los Angeles, California 90071.
  - (4) Based on information reported by The Vanguard Group, Inc. on its most recent Schedule 13G/A filed with the SEC on February 9, 2023. Of the shares of Class A common stock beneficially owned, The Vanguard Group, Inc. reported that it has sole dispositive power with respect to 9,625,108 shares, shared dispositive power with respect to 122,584 shares, sole voting power with respect to 0 shares, and shared voting power with respect to 43,230 shares. The address for The Vanguard Group, Inc. is 100 Vanguard Blvd., Malvern, Pennsylvania 19355.
  - (5) Based on information reported by BlackRock, Inc. on its most recent Schedule 13G/A filed with the SEC on February 7, 2023. Of the shares of Class A common stock beneficially owned, BlackRock, Inc. reported that it has sole dispositive power with respect to 6,278,715 shares and sole voting power with respect to 5,939,897 shares. The address for BlackRock, Inc. is 55 East 52nd Street, New York, New York 10055.
  - (6) Based on information reported by Alkeon Capital Management, LLC on its most recent Schedule 13G/A filed with the SEC on February 13, 2023. Of the shares of Class A common stock beneficially owned, Alkeon Capital Management, LLC and Panayotis D. Sparaggis each reported shared dispositive and voting power with respect to 4,802,188 shares. The address for each of the reporting persons is 350 Madison Avenue, 20th Floor, New York, New York 10017.
  - (7) Consists of 7,207 shares of Class A common stock held of record by Mr. Katibeh and 24,266 shares of Class A common stock issuable pursuant to stock awards releasable within 60 days of January 31, 2022.
  - (8) Consists of 18,173 shares of Class A common stock held of record by Ms. Parekh.
  - (9) Consists of (i) 124,826 shares of Class A common stock held of record by Mr. Marlow; (ii) 6,275 shares of Class A common stock held of record by the JEM Double Happiness 2018 Trust (the “Marlow Trust I”); (iii) 6,275 shares of Class A common stock held of record by the CAM Double Happiness 2018 Trust (the “Marlow Trust II”) (iv) 12,080 shares of Class A common stock held of record by the M&M Family 2020 Irrevocable Trust (the “Marlow Trust III”) (v) 15,060 shares of Class B common stock held of record by Mr. Marlow; (vi) 216,334 shares of Class B common stock held of record by the M&M Twice as Nice Trust (the “Marlow Trust IV”) and, together with the Marlow Trust I, the Marlow Trust II and the Marlow Trust III, the “Marlow Trusts”); (vii) 42,320 shares of Class B common stock held of record by the Marlow Trust III; and (viii) 9,165 shares of Class A common stock issuable pursuant to stock awards releasable within 60 days of January 31, 2023. As trustee of the Marlow Trusts, Mr. Marlow may be deemed to hold voting and dispositive power with respect to the shares held by the Marlow Trusts.
  - (10) Consists of 5,389 shares of Class A common stock held of record by Mr. Agarwal.
  - (11) Consists of 1,478 shares of Class A common stock held of record by Ms. Clyburn.
  - (12) Consists of 1,201 shares of Class A common stock held of record by Mr. Duncan.
  - (13) Consists of (i) 5,657 shares of Class A common stock held of record by Mr. Goldman and (ii) 6,100 shares of Class A common stock held of record by GSW-GV, LLC.
  - (14) Mr. Srinivasan resigned from our board of directors in February 2023.
  - (15) Consists of 21,005 shares of Class A common stock held of record by Mr. Theis.
  - (16) Consists of 13,238 shares of Class A common stock held of record by Mr. Thygesen.

(17) Consists of 11,962 shares of Class A common stock held of record by Mr. Williams.

(18) Consists of (i) 441,429 shares of Class A common stock held of record by our directors and current executive officers; (ii) 69,034 shares of Class A common stock issuable pursuant to stock awards releasable within 60 days of January 31, 2023; (iii) 5,745,332 shares of Class B common stock held of record by our directors and current executive officers; and (iv) no shares of Class B common stock issuable pursuant to stock options exercisable within 60 days of January 31, 2023.

### Equity Compensation Plan Information

The following table summarizes our equity compensation plan information as of December 31, 2022. Information is included for equity compensation plans approved by our stockholders. All of our equity compensation plans have been approved by our stockholders.

| Plan Category  | Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights | Weighted Average Exercise Price of Outstanding Options, Warrants and Rights(1) | Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in the first Column) |
|--|---|--|---|
| Equity compensation plans approved by stockholders     |   |  |   |
| 2010 Equity Incentive Plan(2)                          | 18,133  | \$10.49  | —   |
| 2013 Equity Incentive Plan(3)                          | 4,105   | \$19.81  | 19,648,499  |
| Amended and Restated Employee Stock Purchase Plan(4)   | —   | \$—  | 6,054,525   |
| Equity compensation plans not approved by stockholders | —   | \$—  |   |
| Total  | 22,238  | \$12.53  | 25,703,024  |

- (1) RSUs, which do not have an exercise price, are excluded in the calculation of weighted-average exercise price.
- (2) As a result of our initial public offering and the adoption of our 2013 Plan, we no longer grant awards under the 2010 Plan; however, all outstanding awards under the 2010 Plan remain subject to the terms of the 2010 Plan. To the extent outstanding awards under the 2010 Plan are forfeited or are terminated unexercised and would otherwise have been returned to the share reserve under the 2010 Plan, the shares of Class B Common Stock subject to such awards instead will be available for future issuance as Class A Common Stock under the 2013 Plan.
- (3) Our 2013 Plan provides that the number of shares of Class A Common Stock available for issuance under the 2013 Plan will automatically increase on the first day of each fiscal year beginning with the 2014 fiscal year, in an amount equal to the least of (i) 6,200,000 shares, (ii) five percent (5%) of the outstanding shares of all classes of common stock of the company on the last day of the immediately preceding fiscal year, or (iii) such other amount determined by the board of directors no later than the last day of the immediately preceding fiscal year.
- (4) Our Amended and Restated Employee Stock Purchase Plan (“ESPP”) provides that the number of shares of Class A Common Stock available for issuance under the ESPP will automatically increase on the first day of each fiscal year beginning with the 2014 fiscal year, in an amount equal to the least of (i) 1,250,000 shares, (ii) one percent (1%) of the outstanding shares of all classes of common stock of the company on the last day of the immediately preceding fiscal year, or (iii) such other amount as the board of directors may determine.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

In addition to the compensation arrangements, including employment, termination of employment and change in control arrangements discussed above in the sections titled “Directors, Executive Officers and Corporate Governance—Director Compensation” and “Executive Compensation,” the following is a description of each transaction since January 1, 2022 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeded or exceeds \$120,000; and

- any of our directors, executive officers, or holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with, any of these individuals, had or will have a direct or indirect material interest.

### **Investor Rights Agreement**

We are party to an investor rights agreement which provides, among other things, that certain holders of our common stock, including stockholders affiliated with some of our directors, have the right to request that we file a registration statement or request that their shares be covered by a registration statement that we are otherwise filing.

### **Employment Arrangement**

David Theis, who is the son of Rob Theis, a member of our board of directors and our compensation committee, is employed by us in a non-executive capacity. His compensation for 2022 was comprised of cash salary payments of \$128,873, RSUs with a grant date fair market value of \$22,643 and benefits available to full-time employees. David Theis's compensation is determined independently using Radford market data in the same manner as other employees with similar responsibilities and tenure at the Company. Rob Theis plays no personal role in determining his son's compensation or reviewing his son's performance.

### **Transactions with Executive Officers**

In 2022, we entered into an aircraft charter arrangement with RZS, LLC ("RZS"), a California limited liability company fully controlled and owned by Mr. Shmunis, our CEO and Chairman, to reimburse RZS for the flight hours incurred for Company use of RZS's aircraft. These flight hours were related to business travel by Mr. Shmunis and other members of the executive team to business meetings and investor conferences. We paid RZS approximately \$170,433 for the year ended December 31, 2022 for the business use of the aircraft. Based on current market rates for chartering of private aircraft with industry recognized chartering companies, we believe that the terms of this arrangement are no less favorable to us than what we could have expected to obtain in an arms-length transaction.

### **Limitation of Officer and Director Liability and Indemnification Arrangements**

Our certificate of incorporation and bylaws each provide that we will limit the liability of and indemnify our directors and indemnify our officers and may indemnify our employees and other agents, to the fullest extent permitted by the Delaware General Corporation Law, which prohibits our certificate of incorporation from limiting the liability of our directors for the following:

- any breach of the director's duty of loyalty to us or to our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

If Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. Our certificate of incorporation will not eliminate a director's duty of care and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of non-monetary relief, remain available under Delaware law. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws. Under our bylaws, we will also be empowered to purchase insurance on behalf of any person whom we are required or permitted to indemnify.

In addition to the indemnification required in our certificate of incorporation and bylaws, we have entered into indemnification agreements with each of our current directors and executive officers. These agreements provide for the indemnification of our directors and executive officers for certain expenses and liabilities incurred in connection with any action, suit, proceeding or alternative dispute resolution mechanism, or hearing, inquiry or investigation that may lead to the foregoing, to which they are a party, or are threatened to be made a party, by reason of the fact that they are or were a director, officer, employee, agent or fiduciary of our Company, or any of our subsidiaries, by reason of any action or inaction by them while serving as an officer, director, agent or fiduciary, or by reason of the fact that they were serving at our request as a director, officer, employee, agent or fiduciary of another entity. Under the indemnification agreements, indemnification will only be provided in situations where the indemnified parties acted in good faith and in a manner they reasonably believed to be



in or not opposed to our best interest, and with respect to any criminal action or proceeding, to situations where they had no reasonable cause to believe the conduct was unlawful. In the case of an action or proceeding by or in the right of our Company or any of our subsidiaries, no indemnification will be provided for any claim where a court determines that the indemnified party is prohibited from receiving indemnification. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors or officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. There is no pending litigation or proceeding naming any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

Other than as described above under this section titled "Certain Relationships and Related Transactions, and Director Independence," since January 1, 2022, we have not entered into any transactions, nor are there any currently proposed transactions, between us and a related party where the amount involved exceeds, or would exceed, \$120,000, and in which any related person had or will have a direct or indirect material interest. We believe the terms of the transactions described above were comparable to terms we could have obtained in arm's-length dealings with unrelated third parties.

#### **Policies and Procedures for Related Party Transactions**

We have adopted a policy that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of any class of our common stock and any members of the immediate family of any of the foregoing persons are not permitted to enter into a related party transaction with us without the prior consent of our audit committee. Any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of any class of our common stock or any member of the immediate family of any of the foregoing persons, in which the amount involved exceeds \$120,000 and such person would have a direct or indirect interest must first be presented to our audit committee for review, consideration and approval. In approving or rejecting any such proposal, our audit committee considers the material facts of the transaction, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person's interest in the transaction. In addition, our board of directors has delegated to each of our CEO, our CFO and our General Counsel, as appropriate, the authority to review and approve, as applicable, any such transaction in which the aggregate amount involved is expected to be less than \$120,000, provided that such person charged with such review or approval is not the related person. In connection with each regularly scheduled meeting of our audit committee, a summary of each related party transaction approved in accordance with this paragraph shall be provided to the audit committee for its review.

#### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

##### **Professional Fees Paid to the Independent Registered Public Accounting Firm**

The following table presents fees for professional audit services and other services rendered to our Company by KPMG LLP for the years ended December 31, 2022 and 2021.

|                        | 2022(1)             | 2021                |
|------------------------|---------------------|---------------------|
| Audit Fees (2)         | \$ 2,178,127        | \$ 2,597,263        |
| Audit Related Fees (3) | \$ —                | \$ 350,000          |
| All Other Fees (4)     | \$ 110,500          | \$ 9,500            |
| Total Fees             | <u>\$ 2,288,627</u> | <u>\$ 2,956,763</u> |

(1) This amount excludes certain Audit Fees and Audit Related Fees for professional services rendered by KPMG in the third and fourth quarters of 2022 that have not yet been billed to the Company, and the cost of which cannot be reasonably estimated by the Company at the time of this filing.

- (2) “Audit Fees” consist of professional services rendered in connection with the audit of our annual financial statements, including audited financial statements, an audit of the effectiveness of our internal control over financial reporting, the review of our quarterly financial statements presented in our quarterly report on Form 10-Q, and services that are normally provided by the independent registered public accountants in connection with statutory and regulatory filings or engagements for those fiscal years, including statutory audits of RingCentral CH GmbH and RingCentral France SAS, our wholly owned subsidiaries in Switzerland and France, respectively.
- (3) “Audit Related Fees” consist of professional services provided in connection with the preparation of certain registration statements and related securities offering matters, and acquisitions and strategic investments made in 2021.
- (4) “All Other Fees” consist of a tax and R&D study and an annual license fee for an accounting database subscription.

**Audit Committee Policy on Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm**

Consistent with requirements of the SEC and the Public Company Accounting Oversight Board (the “PCAOB”) regarding auditor independence, our audit committee is responsible for the appointment, compensation and oversight of the work of our independent registered public accounting firm. In recognition of this responsibility, our audit committee has established a policy for the pre-approval of all audit and permissible non-audit services provided by the independent registered public accounting firm. These services may include audit services, audit-related services, tax services and other services.

All services were pre-approved by our audit committee, which concluded that the provision of such services by KPMG LLP, was compatible with the maintenance of that firm’s independence in the conduct of its auditing functions. The audit committee’s pre-approval policy provides for the pre-approval of audit, audit-related and tax services specifically described by the audit committee on an annual basis, and unless a type of service is pre-approved under the policy, it will require separate pre-approval by the audit committee if it is to be provided by the independent registered public accounting firm. The policy authorizes the audit committee to delegate to one or more of its members pre-approval authority with respect to permitted services.

**Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) *Exhibits.* The following exhibits are included herein or incorporated herein by reference:

| <b>Exhibit Number</b> | <b>Description</b>   |
|-----------------------|--|
| 3.1                   | <a href="#">Second Amended and Restated Certificate of Incorporation of the Registrant (filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K, filed on June 3, 2015, and incorporated herein by reference).</a>   |
| 3.2                   | <a href="#">Certificate of Designations of the Series A Convertible Preferred Stock (filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on November 9, 2021, and incorporated herein by reference).</a>   |
| 3.3                   | <a href="#">Amended and Restated Bylaws of the Registrant (filed as Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, filed on November 9, 2022, and incorporated herein by reference).</a>  |
| 4.1                   | <a href="#">Fourth Amended Investor Rights Agreement, dated November 23, 2012, by and among the Registrant and the investors listed on Exhibit A thereto (filed as Exhibit 4.3 to the Registrant's Registration Statement on Form S-1, File No. 333-190815, and incorporated herein by reference).</a>         |
| 4.2                   | <a href="#">Indenture, dated March 5, 2018, between RingCentral, Inc. and U.S. Bank National Association. (filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on March 6, 2018, and incorporated herein by reference).</a>  |
| 4.3                   | <a href="#">Form of 0% Convertible Senior Note due 2023 (included in Exhibit 4.2) (filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on March 6, 2018, and incorporated herein by reference).</a>  |
| 4.4                   | <a href="#">Indenture, dated March 3, 2020, between RingCentral, Inc. and U.S. Bank National Association. (filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on March 4, 2020, and incorporated herein by reference).</a>  |
| 4.5                   | <a href="#">Form of 0% Convertible Senior Notes due 2025 (included in Exhibit 4.4). (filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on March 4, 2020, and incorporated herein by reference).</a>  |
| 4.6                   | <a href="#">Indenture, dated September 15, 2020, between RingCentral, Inc. and U.S. Bank National Association. (filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on September 16, 2020, and incorporated herein by reference).</a>  |
| 4.7                   | <a href="#">Form of 0% Convertible Senior Note due 2026 (included in Exhibit 4.6). (filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on September 16, 2020, and incorporated herein by reference).</a>  |
| 4.8                   | <a href="#">Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. (filed as Exhibit 4.9 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2021, filed on March 1, 2022, and incorporated herein by reference).</a> |
| 10.1+                 | <a href="#">2003 Equity Incentive Plan, as amended, and forms of stock option agreements thereunder (filed as Exhibit 10.1 to the Registrant's Registration Statement on Form S-1, File No. 333-190815, and incorporated herein by reference).</a>   |
| 10.2+                 | <a href="#">2010 Equity Incentive Plan, as amended, and forms of stock option agreements thereunder (filed as Exhibit 10.2 to the Registrant's Registration Statement on Form S-1, File No. 333-190815, and incorporated herein by reference).</a>   |
| 10.3+                 | <a href="#">2013 Equity Incentive Plan and forms of stock option agreements thereunder (filed as Exhibit 10.3 to the Registrant's Registration Statement on Form S-1, File No. 333-190815, and incorporated herein by reference).</a>  |
| 10.4+                 | <a href="#">Amended and Restated 2013 Equity Incentive Plan and related forms of agreement (filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on December 20, 2022, and incorporated herein by reference).</a>  |
| 10.5+                 | <a href="#">Amended and Restated Employee Stock Purchase Plan (filed as Exhibit 10.5 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2020, filed on February 26, 2021, and incorporated herein by reference).</a>   |
| 10.6+                 | <a href="#">Form of Global Restricted Stock Unit Agreement Under the 2013 Equity Incentive Plan (filed as Exhibit 10.6 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2020, filed on February 26, 2021, and incorporated herein by reference).</a>                             |
| 10.7+                 | <a href="#">Equity Acceleration Policy (filed as Exhibit 10.5 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018, filed on February 27, 2019, and incorporated herein by reference).</a>  |

| <b>Exhibit Number</b> | <b>Description</b>   |
|-----------------------|--|
| 10.8+                 | <a href="#">Form of Director and Executive Officer Indemnification Agreement (filed as Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2017, filed on August 7, 2017, and incorporated herein by reference).</a>   |
| 10.9+                 | <a href="#">Employment Letter by and between the Registrant and Vladimir Shmunis, dated September 13, 2013 (filed as Exhibit 10.19 to the Registrant's Registration Statement on Form S-1, File No. 333-190815, and incorporated herein by reference).</a>   |
| 10.10+                | <a href="#">Offer Letter by and between the Registrant and Mohammed Katibeh, dated January 4, 2022 (filed as Exhibit 10.11 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2021, filed on March 1, 2022, and incorporated herein by reference).</a>   |
| 10.11+                | <a href="#">Amended and Restated Offer Letter by and between the Registrant and Mo Katibeh, dated January 4, 2022 (filed as Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2022, filed on August 8, 2022, and incorporated herein by reference).</a>  |
| 10.12+                | <a href="#">Supplemental Offer Letter by and between the Registrant and Mo Katibeh, dated May 9, 2022. (filed as Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2022, filed on August 8, 2022, and incorporated herein by reference).</a>   |
| 10.13+                | <a href="#">Offer Letter by and between the Registrant and Sonalee Parekh, dated April 26, 2022 (filed as Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2022, filed on August 8, 2022, and incorporated herein by reference).</a>  |
| 10.14+                | <a href="#">Offer Letter by and between the Registrant and Vaibhav Agarwal, dated July 21, 2016. (filed as Exhibit 10.12 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2021, filed on March 1, 2022, and incorporated herein by reference).</a>   |
| 10.15+                | <a href="#">Revised Employment Offer Letter by and between the Registrant and John Marlow, dated September 13, 2013 (filed as Exhibit 10.7 to the Registrant's Registration Statement on Form S-1, File No. 333-190815, and incorporated herein by reference).</a>   |
| 10.16+                | <a href="#">2021 Bonus Plan, Appendix A 2021. (filed as Exhibit 10.18 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2021, filed on March 1, 2022, and incorporated herein by reference).</a>  |
| 10.17+                | <a href="#">2022 Bonus Plan, Appendix A-Q1 2022 (filed as Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, filed on November 9, 2022, and incorporated herein by reference).</a>   |
| 10.18+                | <a href="#">2022 Bonus Plan, Appendix A-Q2 2022 (filed as Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, filed on November 9, 2022, and incorporated herein by reference).</a>   |
| 10.19+                | <a href="#">2022 Bonus Plan, Appendix A-Q3-4 2022 (filed as Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, filed on November 9, 2022, and incorporated herein by reference).</a>   |
| 10.20+                | <a href="#">2022 NEO Equity Compensation Program Questions and Answers (filed as Exhibit 10.20 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2021, filed on March 1, 2022, and incorporated herein by reference).</a>   |
| 10.21+                | <a href="#">2023 NEO Equity Compensation Program Questions and Answers.</a>  |
| 10.22                 | <a href="#">Office Lease, dated September 25, 2014, by and between the Registrant and Helen M. Raiser, Trustee of the JHR Marital Trust under Trust Agreement dated October 2, 1969, as amended, Helen M. Raiser, Trustee of the JHR Bypass Trust under Trust Agreement dated October 2, 1969, as amended, Harvey E. Chapman, Jr., Trustee of the Harvey E. Chapman, Jr. Living Trust under Trust Agreement dated July 17, 2006, and Colleen C. Badell, Trustee of the Colleen C. Badell Living Trust under Trust Agreement dated July 17, 2006, as tenants in common (filed as Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2014, filed on November 3, 2014, and incorporated herein by reference).</a> |
| 10.23                 | <a href="#">Commercial Lease Agreement, dated May 17, 2017, by and between the Registrant and TG Brothers, LLC. (filed as Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2017, filed on August 7, 2017, and incorporated herein by reference).</a>  |
| 10.24                 | <a href="#">First Amendment to Lease, dated May 7, 2018, by and between the Registrant and TG Brothers, LLC. (filed as Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018, filed on August 7, 2018, and incorporated herein by reference).</a>   |

| <b>Exhibit Number</b> | <b>Description</b>  |
|-----------------------|---|
| 10.25                 | <a href="#">Second Amendment to Lease, dated September 20, 2019, by and between the Registrant and TG Brothers, LLC. (filed as Exhibit 10.20 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2019, filed on February 26, 2020, and incorporated herein by reference).</a>  |
| 10.26                 | <a href="#">Second Amendment to Lease, dated August 6, 2020 by and between the Registrant and Phillip H. Raiser, Trustee of the JHR Marital Trust under Trust Agreement dated October 2, 1969, as amended, Phillip H. Raiser, Trustee of the JHR Bypass Trust under Trust Agreement dated October 2, 1969, as amended, Harvey E. Chapman, Jr., Trustee of the Harvey E. Chapman, Jr. Living Trust under Trust Agreement dated July 17, 2006, and Colleen C. Badell, Trustee of the Colleen C. Badell Living Trust under Trust Agreement dated July 17, 2006, as tenants in common. (filed as Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, filed on November 9, 2020, and incorporated herein by reference).</a> |
| 10.27                 | <a href="#">Purchase Agreement, dated February 28, 2018, by and among the Registrant and Morgan Stanley &amp; Co. LLC and Goldman Sachs &amp; Co. LLC, as representatives of the initial purchasers named therein. (filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 6, 2018, and incorporated herein by reference).</a>   |
| 10.28                 | <a href="#">Form of Capped Call Confirmation. (filed as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on March 6, 2018, and incorporated herein by reference).</a>  |
| 10.29                 | <a href="#">Form of Capped Call Confirmation. (filed as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on March 4, 2020, and incorporated herein by reference).</a>  |
| 10.30                 | <a href="#">Form of Capped Call Confirmation. (filed as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on September 16, 2020, and incorporated herein by reference).</a>   |
| 10.31                 | <a href="#">Registration Rights Agreement, effective as of November 9, 2021, by and between RingCentral, Inc. and Searchlight II MLN, L.P. (filed as Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on November 9, 2021, and incorporated herein by reference).</a>  |
| 10.32                 | <a href="#">Registration Rights Agreement, effective as of November 9, 2021, by and between RingCentral, Inc. and Mitel US Holdings, Inc. (filed as Exhibit 10.4 to Registrant's Current Report on Form 8-K filed on November 9, 2021, and incorporated herein by reference).</a>   |
| 10.33*                | <a href="#">Credit Agreement, dated as of February 14, 2023, among RingCentral, Inc., the lenders from time to time party thereto and Bank of America, N.A., as administrative agent and as collateral agent.</a>   |
| 21.1                  | <a href="#">List of subsidiaries of the Registrant.</a>   |
| 23.1                  | <a href="#">Consent of KPMG LLP, independent registered public accounting firm.</a>   |
| 24.1                  | <a href="#">Power of Attorney (included in signature page).</a>   |
| 31.1                  | <a href="#">Certification of Periodic Report by Principal Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002.</a>  |
| 31.2                  | <a href="#">Certification of Periodic Report by Principal Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002.</a>  |
| 32.1                  | <a href="#">Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>   |
| 32.2                  | <a href="#">Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>   |
| 101.INS               | Inline XBRL Instance Document.  |
| 101.SCH               | Inline XBRL Taxonomy Extension Schema Document.   |
| 101.CAL               | Inline XBRL Taxonomy Extension Calculation Linkbase Document.   |
| 101.DEF               | Inline XBRL Taxonomy Extension Definition Linkbase Document.  |
| 101.LAB               | Inline XBRL Taxonomy Extension Label Linkbase Document.   |
| 101.PRE               | Inline XBRL Taxonomy Extension Presentation Linkbase Document.  |
| 104                   | Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).   |

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+ Indicates a management or compensatory plan

\* In accordance with Item 601(a)(5) of Regulation S-K, the exhibits and schedules to Exhibit 10.33 are not filed herewith. The agreement identifies such exhibits and schedules, including the subject matter of their content. We undertake to provide copies of such exhibits and schedules to the SEC upon request.

(b) *Financial Statements.* Our consolidated financial statements are included under Part II, Item 8 in this Annual Report on Form 10-K.

(c) *Financial Statement Schedules.* All financial statement schedules are omitted because they are not applicable or the information is included in the Registrant's consolidated financial statements or related notes.

**PART IV.  
SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Belmont, State of California, on this 23rd day of February 2023.

**RINGCENTRAL, INC.**

Date: February 23, 2023

/s/ Vladimir Shmunis  
Vladimir Shmunis  
Chairman and Chief Executive Officer  
(Principal Executive Officer)

Date: February 23, 2023

/s/ Sonalee Parekh  
Sonalee Parekh  
Chief Financial Officer  
(Principal Financial Officer)

Date: February 23, 2023

/s/ Vaibhav Agarwal  
Vaibhav Agarwal  
Deputy Chief Financial Officer and Chief Accounting Officer (Principal  
Accounting Officer)

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Vladimir Shmunis, Sonalee Parekh, and Vaibhav Agarwal, and each of them, his true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| <b>Signature</b>   | <b>Title</b>   | <b>Date</b>       |
|--|--|-------------------|
| <u>/s/ Vladimir Shmunis</u><br><b>Vladimir Shmunis</b>     | Chairman and Chief Executive Officer<br><i>(Principal Executive Officer)</i>                         | February 23, 2023 |
| <u>/s/ Sonalee Parekh</u><br><b>Sonalee Parekh</b>         | Chief Financial Officer<br><i>(Principal Financial Officer)</i>                                      | February 23, 2023 |
| <u>/s/ Vaibhav Agarwal</u><br><b>Vaibhav Agarwal</b>       | Deputy Chief Financial Officer and Chief Accounting Officer<br><i>(Principal Accounting Officer)</i> | February 23, 2023 |
| <u>/s/ Robert Theis</u><br><b>Robert Theis</b>             | Director   | February 23, 2023 |
| <u>/s/ Allan Thygesen</u><br><b>Allan Thygesen</b>         | Director   | February 23, 2023 |
| <u>/s/ R. Neil Williams</u><br><b>R. Neil Williams</b>     | Director   | February 23, 2023 |
| <u>/s/ Kenneth A. Goldman</u><br><b>Kenneth A. Goldman</b> | Director   | February 23, 2023 |
| <u>/s/ Mignon L. Clyburn</u><br><b>Mignon L. Clyburn</b>   | Director   | February 23, 2023 |
| <u>/s/ Arne Duncan</u><br><b>Arne Duncan</b>               | Director   | February 23, 2023 |
| <u>/s/ Tarek Robbiati</u><br><b>Tarek Robbiati</b>         | Director   | February 23, 2023 |



## RINGCENTRAL, INC.

## 2023 NEO EQUITY COMPENSATION PROGRAM QUESTIONS AND ANSWERS

**ELIGIBLE EMPLOYEES:** All NEOs (except CEO)

This document constitutes the RingCentral, Inc. 2023 NEO Equity Compensation Program (“NEO Equity Plan”). RingCentral, Inc. is referred to as “RingCentral,” “we,” “us” and “our.”

**1. What is the NEO Equity Plan?**

The NEO Equity Plan provides you with an opportunity to receive a portion of your base salary for the period from January 1, 2023 through December 31, 2023 in the form of restricted stock units (“RSUs”) under the Company’s 2013 or 2023 Equity Incentive Plan, as applicable (the “Equity Incentive Plan”) under the terms and conditions described in this Q&A and in the Election Form (attached as Exhibit A hereto). The NEO Equity Plan will not change the value of your base salary.

**2. Who is eligible to participate in the NEO Equity Plan?**

All Named Executive Officers (as defined in the Proxy Rules under the Securities Exchange Act of 1934) other than the CEO may voluntarily participate in the NEO Equity Plan in full. This means that a portion of their base salary for the period from January 1, 2023 through December 31, 2023 will be paid entirely in RSUs in lieu of cash.

**3. How much of my base salary will I be paid in cash for 2023?**

For 2023, \$60,000 of your base salary will be paid in cash, less applicable withholdings and deductions. This means that you will receive \$2,500, less applicable withholdings and deductions, of your salary in cash twice a month for the period from January 1 through December 31, 2023. The cash amount will be sufficient to cover deductions for health benefits and 401(k) contributions, and a portion of ESPP withholding (see Question 15). The remainder of your salary for this period will be paid in RSUs.

**4. When will the RSUs be granted to me, and when will they vest?**

The RSUs will be granted and fully vested as follows for the following base salary periods:

- For the period from January 1, 2023 through February 15, 2023, the RSUs will be **granted and vested** on January 3, 2023.
  - For the period from February 16, 2023 through May 15, 2023, the RSUs will be **granted and vested** on February 15, 2023.
  - For the period from May 16, 2023 through August 15, 2023, the RSUs will be **granted and vested** on May 15, 2023.
  - For the period from August 16, 2023 through November 15, 2023, the RSUs will be **granted and vested** on August 15, 2023.
  - For the period from November 16, 2023 through December 31, 2023, the RSUs will be **granted and vested** on November 15, 2023.
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Please see below in Question 9 for more information regarding the vesting and timing of issuance of your RSUs.

**5. Does participation in the Equity Plan affect my MBO?**

Participation in the NEO Equity Plan will not affect your MBO. Your quarterly MBO will be calculated based on your full quarterly gross salary amount, whether your salary is paid all in cash or a portion is paid in RSUs.

**6. How do I participate?**

An email with the Election Form will be sent to you via DocuSign. If you would like to opt into this program and receive a portion of your base salary for the period from January 1, 2023 through December 31, 2023 in the form of RSUs, you must acknowledge/agree to the Election Form by **December 14, 2022 at 5 pm PST** (the “Submission Deadline”).

**7. Can I participate with respect to a different amount of my base salary or only part of the remaining periods of 2023, or do I have to make an all-or-nothing choice?**

This is an all-or-nothing choice. If you participate in the NEO Equity Plan, you must participate with respect to either (a) all but \$60,000 of your gross base salary, subject to applicable deductions and withholdings, for the entire period from January 1, 2023 through December 31, 2023 or (b) none of your **gross** base salary during that period.

**8. How many RSUs will I receive for the RSU portion of my base salary?**

For each corresponding 2023 base salary period described in Question 4, the number of RSUs you receive will be determined based on (i) the U.S. dollar value of the portion of your base salary to be paid in RSUs, (ii) divided by the Calculation Price, and (iii) rounded up to the nearest whole number.

The “**Calculation Price**” will be the closing price of RNG stock on the first trading day on or after January 1, February 15, May 15, August 15, or November 15, as applicable.

**9. If I elect to receive a portion of my base salary in RSUs under the NEO Equity Plan, when will these RSUs be granted and are the RSUs subject to a vesting schedule?**

Any RSUs you receive for a portion of your base salary will be 100% vested and settled in shares of Class A common stock on the first trading day on or after January 1, February 15, May 15, August 15, or November 15, as applicable, subject to your continued employment with RingCentral or an affiliated entity through the vesting/issuance date. Shares of Class A common stock issued to you can be sold immediately (subject to any required administrative processing time and any applicable insider trading policy).

**10. Does the payment of a portion of my 2023 base salary in RSUs present me with any risk from the Company's stock price falling?**

Although the intent of using the Calculation Price (under Question 8) was designed to protect you from much of the potential market risk, it is possible that you could end up with sale proceeds from the shares that is less than the cash equivalent of the base salary you would have otherwise been paid in cash.

**11. Since the RSUs are granted in advance on the first day of the applicable period of base salary, what happens if I leave RingCentral before the end of the applicable period?**

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If you leave RingCentral during the applicable period for which you received a grant of RSUs in lieu of cash, you will be entitled to keep the RSUs.

**12. When will I be taxed on the RSUs that I receive for my 2023 Quarterly Bonus?**

You will be taxed when the RSUs are granted to you because they will be fully vested at grant. The RSUs will be taxed as income on the dates of vesting at your applicable income tax rate, based on the value of the RSUs on the dates of vesting. Please see the attached Employee Information Supplement.

**13. How do I satisfy the tax withholding obligations for the vesting of RSUs and issuance of shares?**

Please see the attached Employee Information Supplement. The Company will withhold a number of shares upon vesting of the RSUs to cover the amount of the tax owed and will issue you the remainder of the shares (net issuance).

**14. Can how taxes are paid be amended or terminated?**

No, you will pay taxes through net issuance of the shares during the period of the program.

**15. If I receive a portion of my base salary in RSUs, will the value of that portion of my salary be included for purposes of calculating contributions to the ESPP or 401(k) Plan?**

No, if you receive a portion of your base salary in RSUs, the value of the RSUs will not be included as compensation for purposes of the calculation of contributions under the ESPP or 401(k) plan. You can continue to contribute amounts into the ESPP and 401(k) plan from your \$60,000 cash compensation as defined under the applicable plan, provided that you are otherwise eligible for such plan. During the period of November 14, 2022 through May 12, 2023, and the period from May 15, 2023 through November 12, 2023, your participation in the 2023 plan (and, if applicable, your prior participation in the 2022 plan) will reduce your maximum contribution to the ESPP for the May 15, 2023 and November 13, 2023 purchases to 15% of the base salary paid in those periods in cash. With respect to the 401(k) plan, you will still be able to reach the maximum employee contribution amount for 2023 by increasing your contribution percentage in each paycheck. However, because the maximum employer match per paycheck under the 401(k) plan is limited to 3% of cash compensation, you will not be able to reach the maximum employer match in 2023 (the maximum possible will be approximately \$1,800).

**16. Should I participate in the NEO Equity Plan?**

We can't tell you whether or not to participate in the NEO Equity Plan. Your specific personal financial consequences and U.S. federal, state and local tax consequences depend upon your individual circumstances. Accordingly, **we strongly recommend that you seek the advice of a qualified financial and tax adviser regarding your participation in the NEO Equity Plan.** Please note that this document supersedes any and all other disclosures of any kind regarding the NEO Equity Plan and, in the event of any conflict between this document and any prior communication or disclosure, this document shall control.

**17. What if I have questions about the NEO Equity Plan or this document?**

Please contact the stock administration team at [stock@ringcentral.com](mailto:stock@ringcentral.com).

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This document serves as a supplement (the “**Supplement**”) to the prospectus for our NEO Equity Plan. The purpose of this Supplement is to update the prospectus by adding new information pertaining to the NEO Equity Plan outlined above. Please keep this Supplement with the prospectus.

**This Supplement constitutes part of a prospectus covering securities that have been registered under the U.S. Securities Act of 1933, as amended.**

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**EXHIBIT A**

**RINGCENTRAL, INC.**

**2023 NEO EQUITY COMPENSATION PLAN ELECTION FORM**

If you would like to elect (the “**Election**”) to receive all but \$60,000 of your base salary, subject to annual withholdings and deductions, for the period from January 1, 2023 through December 31, 2023 in restricted stock units (“**RSUs**”) on the terms and conditions below, including those in the Terms and Conditions attached hereto (together, this “**Election Form**”), in the RingCentral, Inc. 2023 NEO Equity Compensation Plan Questions and Answers (“**NEO Equity Plan**”) and as set forth in the 2013 or 2023 Equity Incentive Plan, as applicable (the “**Equity Incentive Plan**”), please follow the steps via DocuSign as prescribed and accept this Election Form no later than **December 14, 2022 at 5:00 pm PST** (the “**Submission Deadline**”).

If you do not accept this Election Form via DocuSign by the Submission Deadline, then your base salary will be paid in cash. If you have questions regarding the Election, please contact the stock administration team at [stock@ringcentral.com](mailto:stock@ringcentral.com).

Please submit this Election Form only if you wish to receive all but \$60,000 of your base salary, less applicable withholdings and deductions, for the period from January 1, 2023 through December 31, 2023 in RSUs.

By accepting this Election Form by the Submission Deadline, you authorize the implementation of the Election and agree to the following:

- You have read and understand the 2023 NEO Equity Plan previously provided to you, and that your RSUs will be granted under the terms as described therein.
  - You understand that the RSUs granted will, in all respects, be subject to the terms and conditions of the NEO Equity Plan, any applicable award agreement governing the RSUs, and this Election Form. If there is any inconsistency between the NEO Equity Plan including this Election Form, the Equity Incentive Plan or any applicable law, then the provisions of the Equity Incentive Plan, as applicable, will control over the provisions of the NEO Equity Plan including this Election Form), subject to any applicable law.
  - By electing to participate in the NEO Equity Plan, you cannot defer the grant of any RSUs by contributing any such amount to the Employee Stock Purchase Plan, 401(k) plan for U.S. employees or certain other similar contribution plans for employees outside the U.S. You can contribute amounts to the Employee Stock Purchase Plan, 401(k) plan for U.S. employees or certain other similar contribution plans for employees outside the U.S. from the \$60,000 of your base salary to be paid in cash, provided that you are otherwise eligible for such plan.
  - You should seek the advice of a qualified financial and tax adviser regarding your participation in the NEO Equity Plan and the Election. Nothing in this Election Form
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shall be interpreted to form an employment contract or relationship with the Company, or to confer upon you any right respect to the continuation of employment with the Company or, if different, an affiliated entity to which you provide services (the "Employer"), and you or your Employer may terminate your employment at any time.

*PARTICIPANT:*

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_

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## TERMS AND CONDITIONS

### 1. Responsibility for Taxes.

a) Regardless of any action the Company or, if different, your Employer takes with respect to any or all income tax, social insurance, fringe benefits tax, payroll tax, payment on account or other tax-related items related to your participation in the NEO Equity Plan and legally applicable to you (“**Tax-Related Items**”), by electing to participate in the NEO Equity Plan, you acknowledge that the ultimate liability for all Tax-Related Items is and remains your responsibility and may exceed the amount, if any, actually withheld by the Company or the Employer. You further acknowledge that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the right to acquire shares of Class A common stock, including, but not limited to, the acquisition of shares, the subsequent sale of shares acquired pursuant to the NEO Equity Plan and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the right to acquire shares or any aspect of your participation in the Equity Plan to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. Further, if you have become subject to tax in more than one jurisdiction, you acknowledge that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

b) Prior to any relevant taxable or tax withholding event, as applicable, you will pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, you authorize the Company and/or the Employer, or their respective agents, at their discretion, to satisfy any applicable withholding obligations with regard to all Tax-Related Items by one or a combination of the following:

- i. withholding from your wages or other cash compensation paid to you by the Company and/or the Employer;
- ii. withholding from the proceeds resulting from the sale of shares acquired under the NEO Equity Plan, either through a voluntary sale, or through a mandatory sale arranged by the Company (on your behalf pursuant to this authorization without further consent); and
- iii. any other arrangement approved by the Company and permitted under applicable law.

c) The Company may withhold or account for Tax-Related Items by considering applicable statutory withholding rates or other withholding rates, including maximum rates applicable in your jurisdiction, in which case you may receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent in Class A common stock.

d) Finally, you shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of your participation in the Equity Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver shares or proceeds from the sale of shares if you fail to comply with your obligations in connection with the Tax-Related Items.

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2. Nature of Grant. By electing to participate in the Equity Plan, you acknowledge, understand and agree that:
- a) the offer of participation in the Equity Plan does not entitle you to receive a bonus;
  - b) the Equity Plan is established voluntarily by the Company, it is discretionary in nature, and it may be modified, amended, suspended or terminated by the Company at any time;
  - c) the Company's offer of participation in the NEO Equity Plan is exceptional, voluntary and occasional and does not create any contractual or other right to receive future offers, or benefits in lieu of offers, even if offers to participate in the Equity Plan have been offered in the past;
  - d) all decisions with respect to future offers to participate in the NEO Equity Plan, if any, will be at the sole discretion of the Company;
  - e) you are voluntarily participating in the NEO Equity Plan;
  - f) the right to acquire shares and any shares to be acquired under the NEO Equity Plan, and the value of and income from same, are not intended to replace any pension rights or compensation, except all but \$60,000 of your base salary for the period from January 1, 2023 through December 31, 2023;
  - g) the right to acquire shares and any shares to be acquired under the Equity Plan, and the value of and income from same, are not part of normal or expected compensation or salary for purposes of, including but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, holiday pay, bonuses, long-service awards, leave-related payments, pension or retirement or welfare benefits or similar mandatory payments;
  - h) the future value of the underlying shares is unknown, indeterminable and cannot be predicted with certainty;
  - i) in consideration of the right to acquire shares, no claim or entitlement to compensation or damages shall arise from the forfeiture of the right to acquire shares resulting from termination of your employment with the Company or the Employer (for any reason whatsoever and whether or not in breach of local labor laws); and except where expressly prohibited under applicable laws, you irrevocably release the Company and the Employer from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, you shall be deemed irrevocably to have waived any entitlement to pursue such claim;
  - j) the right to acquire shares and the benefits under the NEO Equity Plan, if any, will not automatically transfer to another company in the case of a merger, take-over or transfer of liability; and
  - k) neither the Company, the Employer, nor any other subsidiary will be liable for any foreign exchange rate fluctuation between any local currency and the U.S. dollar that may affect the value of the right to acquire shares or of any amounts due to you pursuant to the acquisition of shares or the subsequent sale of any shares acquired under the Equity Plan.
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3. No Advice Regarding Participation. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding your participation in the NEO Equity Plan, the acquisition of shares or the subsequent sale of any shares acquired under the NEO Equity Plan. You should consult with your own personal tax, legal and financial advisors regarding participation in the NEO Equity Plan before taking any action related to the Equity Plan.

4. Severability. The invalidity or unenforceability of any provision of the Election Form will not affect the validity or enforceability of the other provisions of the Election Form, which will remain in full force and effect. Moreover, if any provision is found to be excessively broad in duration, scope or covered activity, the provision will be construed so as to be enforceable to the maximum extent compatible with applicable law.

5. Language. You acknowledge that you are sufficiently proficient in English, or have consulted with an advisor who is sufficiently proficient in English, so as to allow you to understand the terms of the NEO Equity Plan and the Election Form. Furthermore, if you have received the Election Form or any other document related to the NEO Equity Plan translated into a language other than English and if the meaning of the translated version is different from the English version, the English version will control.

6. Electronic Delivery and Participation. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the NEO Equity Plan by electronic means. You hereby consent to receive such documents by electronic delivery and agree to participate in the NEO Equity Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

7. Imposition of Other Requirements. The Company reserves the right to impose other requirements on your participation in the NEO Equity Plan, the right to acquire shares under the NEO Equity Plan, and any shares acquired under the NEO Equity Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

8. Governing Law; Venue. The Election Form is to be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws principles thereof.

For purposes of litigating any dispute that arises under the Election Form or pursuant to your participation in the NEO Equity Plan, if you are subject to an arbitration agreement you must submit such claims to arbitration, pursuant to the terms of your arbitration agreement. If you are not subject to an arbitration agreement, the parties hereby submit to and consent to the jurisdiction of the State of California and agree that such litigation shall be conducted in the courts of San Mateo County, California, or the U.S. District Court for the Northern District of California.

9. Waiver. You acknowledge that a waiver by the Company of breach of any provision of the Election Form will not operate or be construed as a waiver of any other provision of the Election Form, or of any subsequent breach by any other participant.

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10. Insider Trading; Market Abuse Laws. By electing to participate in the NEO Equity Plan, you acknowledge that you have read and understand the Company's insider trading policy, and are aware of and understand your obligations under federal securities laws in respect of trading in the Company's securities. The Company will have the right to recover, or receive reimbursement for, any compensation or profit realized on the acquisition or disposition of shares under the Equity Plan to the extent that the Company has a right of recovery or reimbursement under applicable securities laws.

You acknowledge that you may be subject to insider trading restrictions and/or market abuse laws, which may affect your ability to accept, acquire, sell or otherwise dispose of shares, rights to shares (e.g., the right to acquire shares under the NEO Equity Plan) or rights linked to the value of shares under the NEO Equity Plan during such times as you are considered to have "inside information" regarding the Company (as defined by applicable laws or regulations). Local insider trading laws and regulations may prohibit the cancellation or amendment of orders you placed before you possessed inside information. Furthermore, you could be prohibited from (i) disclosing the inside information to any third party (ii) "tipping" third parties or causing them otherwise to buy or sell securities. Keep in mind third parties include fellow employees. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under the Company's insider trading policy. You acknowledge that it is your responsibility to comply with any applicable restrictions, and you should speak to a personal advisor on this matter.

Published CUSIP Number: 76681BAA9

CREDIT AGREEMENT

Dated as of February 14, 2023

among

RINGCENTRAL, INC.,  
as the Borrower,

THE LENDERS PARTY HERETO

and

BANK OF AMERICA, N.A.,  
as Administrative Agent and Collateral Agent

BANK OF AMERICA, N.A.  
and  
JPMORGAN CHASE BANK, N.A.  
as Joint Lead Arrangers and Joint Bookrunners,

WELLS FARGO SECURITIES LLC,  
as Joint Bookrunner,

JPMORGAN CHASE BANK, N.A. and  
WELLS FARGO BANK, N.A.  
as Co-Syndication Agents,

and

TD SECURITIES (USA) LLC,  
as Documentation Agent

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “Agreement”) is entered into as of February 14, 2023, among RINGCENTRAL, INC., a Delaware corporation (the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”) and BANK OF AMERICA, N.A. (“Bank of America”), as Administrative Agent and Collateral Agent.

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

### ARTICLE I

#### Definitions and Accounting Terms

Section 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“Acceptable Intercreditor Agreement” means a customary intercreditor agreement that either (A) is substantially in the form of Exhibit G-1 or G-2 hereto or (B) has changes to Exhibit G-1 or G-2 hereto as reasonably agreed between the Administrative Agent and the Borrower which have not been objected to by the Required Lenders within five (5) Business Days of having been posted (which shall be deemed acceptable to the Administrative Agent and the Required Lenders).

“Acquired EBITDA” means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary for any period, the portion of Consolidated EBITDA for such period attributable to such Acquired Entity or Business or Converted Restricted Subsidiary, as applicable, all as determined on a consolidated basis for such Acquired Entity or Business or Converted Restricted Subsidiary, as applicable.

“Acquired Entity or Business” has the meaning specified in the definition of the term “Consolidated EBITDA.”

“Acquisition” means any transaction, or series of related transactions, resulting in the acquisition of (a) the Equity Interests in a Person if, as a result of such acquisition, such Person shall become a Restricted Subsidiary (or shall be merged, amalgamated or consolidated with or into, the Borrower or any Restricted Subsidiary) or (b) all or substantially all the assets of any Person (or of any business unit, division, product line or line of business of any Person) if such assets are acquired by the Borrower or any Restricted Subsidiary.

“Additional Lender” has the meaning specified in Section 2.14(d).

“Additional Revolving Credit Commitment” has the meaning specified in Section 2.14(a).

“Administrative Agent” means, subject to Section 9.13, Bank of America in its capacity as administrative agent under the Loan Documents, or any successor administrative agent appointed in accordance with Section 9.09.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify in writing the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Agent-Related Persons” means the Agents and their respective Related Parties.

“Agents” means, collectively, the Administrative Agent, the Collateral Agent and the Supplemental Administrative Agents (if any).

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” has the meaning specified in the introductory paragraph hereof.

“Agreement Currency” has the meaning specified in Section 10.17.

“Applicable Authority” means CME or any Governmental Authority having jurisdiction over the Administrative Agent or CME.

“Applicable Lending Office” means for any Lender, such Lender’s office, branch or affiliate designated for Term SOFR Loans, Base Rate Loans, L/C Advances or Letters of Credit, as applicable, as notified to the Administrative Agent, any of which offices may be changed by such Lender upon written notice to the Administrative Agent.

“Applicable Percentage” means, at any time (a) with respect to any Lender with a Commitment of any Class, the percentage equal to a fraction the numerator of which is the amount of such Lender’s Commitment of such Class at such time and the denominator of which is the aggregate amount of all Commitments of such Class of all Lenders and (b) with respect to the Loans of any Class, a percentage equal to a fraction the numerator of which is such Lender’s Outstanding Amount of the Loans of such Class and the denominator of which is the aggregate Outstanding Amount of all Loans of such Class.

“Applicable Rate” means a percentage per annum equal to (a) prior to the delivery of the Compliance Certificate pursuant to Section 6.02(a) for the fiscal quarter ending June 30, 2023, (i) with respect to Initial Term Loans, Initial Revolving Credit Loans and Letter of Credit fees, (A) for Term SOFR Loans and Letter of Credit fees, 2.75% per annum and (B) for Base Rate Loans, 1.75% per annum,

and (ii) with respect to the Commitment Fee, 0.375% per annum, and (b) thereafter, the percentage per annum set forth across from the caption “Applicable Rate for Term SOFR Loans and Letter of Credit fees”, “Applicable Rate for Base Rate Loans” or “Commitment Fee” in the table below, as the case may be, based upon the pricing level determined by reference to the Total Net Leverage Ratio, as more fully described below.

|  | <b>Level 1</b> | <b>Level 2</b>     | <b>Level 3</b>     | <b>Level 4</b>     | <b>Level 5</b> |
|--|----------------|--------------------|--------------------|--------------------|----------------|
| <b>Total Net Leverage Ratio</b>                                      | <1.25x         | ≥1.25x but < 2.25x | ≥2.25x but < 3.25x | ≥3.25x but < 4.25x | ≥4.25x         |
| <b>Commitment Fee</b>  | 0.250%         | 0.300%             | 0.350%             | 0.375%             | 0.425%         |
| <b>Applicable Rate for Term SOFR Loans and Letter of Credit fees</b> | 2.00%          | 2.25%              | 2.50%              | 2.75%              | 3.00%          |
| <b>Applicable Rate for Base Rate Loans</b>                           | 1.00%          | 1.25%              | 1.50%              | 1.75%              | 2.00%          |

Each change in the Applicable Rate resulting from delivery of a Compliance Certificate reflecting a change in the Total Net Leverage Ratio shall be effective during the period commencing on the date of the delivery of a Compliance Certificate reflecting such change in the Total Net Leverage Ratio and ending on the date immediately preceding the effective date of the next such change of the Total Net Leverage Ratio; provided that the Applicable Rate set forth for Level 5 shall apply (x) as of the first Business Day after the date on which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b) and were not delivered, and shall continue to so apply to and including the date on which such financial statements are delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply), and (y) as of the first Business Day after the date on which a Compliance Certificate was required to be delivered pursuant to Section 6.02(a) and was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined that the Total Net Leverage Ratio set forth in any Compliance Certificate delivered to the Administrative Agent is inaccurate for any reason and the result thereof is that the Lenders received interest or fees for any period based on an Applicable Rate that is less than that which would have been applicable had the Total Net Leverage Ratio been accurately determined, then, for all purposes of this Agreement, the “Applicable Rate” for any day occurring within the period covered by such Compliance Certificate shall retroactively be deemed to be the relevant percentage as based upon the accurately determined Total Net Leverage Ratio for such period, and any shortfall in the interest or fees theretofore paid by the Borrower for the relevant period pursuant to Sections 2.09 and 2.10 as a result of the miscalculation of the Total Net Leverage Ratio shall be deemed to be (and shall be) due and payable under the relevant provisions of Sections 2.09 or 2.10, as applicable, at the time the interest or fees for such period were required to be paid pursuant to said Section (and shall remain due and payable until paid in full, together with all amounts owing under Section 2.09 (other than Section 2.09(c)), in accordance with the terms of this Agreement); provided that, notwithstanding the foregoing, so long as an Event of Default described in Section 8.01(f) has not occurred with respect to the

Borrower, such shortfall shall be due and payable five (5) Business Days following written demand for payment from the Administrative Agent to the Borrower following the determination described above.

The Applicable Rate in respect of any Class of Extended Revolving Credit Commitments, Loans made pursuant to any Extended Revolving Credit Commitments, Extended Term Loans, Incremental Revolving Credit Commitments, Loans made pursuant to any Incremental Revolving Credit Commitments or Incremental Term Loans shall be the applicable percentages per annum set forth in the relevant Extension Offer or Incremental Facility Amendment, as applicable.

“Applicable Ticking Fee Rate” means (a) on and after the Closing Date to but not including the date that is six months after the Closing Date, 0.375% per annum and (b) on and after the date that is six months after the Closing Date to but not including the Delayed Draw Termination Date, 0.500% per annum.

“Appropriate Lenders” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class and (b) with respect to any Letters of Credit, (i) the relevant L/C Issuer and (ii) the Revolving Credit Lenders.

“Approved Foreign Bank” has the meaning specified in the definition of “Cash Equivalents.”

“Approved Fund” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“Arrangers” means, individually and collectively, (a) Bank of America, N.A. and JPMorgan Chase Bank, N.A., in their capacities as Joint Lead Arrangers and Joint Bookrunners, (b) Wells Fargo Securities LLC, in its capacity as Joint Bookrunner, (c) JPMorgan Chase Bank, N.A. and Wells Fargo Bank, N.A., in their capacities as Co-Syndication Agents, and (d) TD Securities (USA) LLC, in its capacity as Documentation Agent.

“Assignees” has the meaning specified in Section 10.07(b).

“Assignment Tax” has the meaning specified in the definition of “Other Taxes”.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit E.

“Attorney Costs” means all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Audited Borrower Financial Statements” means (a) the audited consolidated balance sheet of the Borrower for the period covered in the most recent Annual Report on Form 10-K filed by the

Borrower with the SEC prior to the Closing Date and (b) the related audited consolidated statements of operations, comprehensive income, stockholders' equity and cash flows of the Borrower for the period covered in the most recent Annual Report on Form 10-K filed by the Borrower with the SEC prior to the Closing Date.

“Auto-Renewal Letter of Credit” has the meaning specified in Section 2.03(b)(iii).

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

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

“Bank of America” has the meaning specified in the introductory paragraph to this Agreement.

“Bankruptcy Code” means Title 11 of the United State Code, as amended, or any similar federal or state law for the relief of debtors.

“Bankruptcy Event” means, with respect to any Person, such Person or its parent entity becomes (other than via an Undisclosed Administration) the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, so long as such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person or its parent entity.

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1.00%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” (c) Term SOFR with an interest period of one month for such date plus 1.00% and (d) 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing “prime rate” loans, which may be priced at, above, or below such announced rate. Any change in such prime rate

announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.02, then the Base Rate shall be the greatest of clauses (a), (b) and (d) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means the certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230, as amended or modified from time to time.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” has the meaning specified in Section 10.27(b).

“Borrower” has the meaning specified in the introductory paragraph to this Agreement.

“Borrower Materials” has the meaning specified in Section 6.02.

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

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York.

“Capital Expenditures” means, for any period, the aggregate of, without duplication, (a) all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as additions during such period to property, plant or equipment in a consolidated statement of cash flows and reflected in the consolidated balance sheet of the Borrower and its Restricted Subsidiaries and (b) Capitalized Lease Obligations incurred by the Borrower and its Restricted Subsidiaries during such period.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“Capitalized Leases” means all leases that are required to be, in accordance with GAAP, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP;

provided, further that all obligations of the Borrower and its Restricted Subsidiaries that are or would be characterized as an operating lease as determined in accordance with GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as an operating lease (and not as a Capitalized Lease) for purposes of this Agreement (other than for purposes of the delivery of financial statements prepared in accordance with GAAP) regardless of whether or not such operating lease obligations were in effect on such date, notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized or finance lease obligations in accordance with GAAP.

"Cash Collateral" has the meaning specified in Section 2.03(f).

"Cash Collateralize" has the meaning specified in Section 2.03(f).

"Cash Equivalents" means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

(1) Dollars;

(2) securities issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality of the foregoing the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less 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, with any domestic or foreign commercial bank having capital and surplus of not less than \$500,000,000 in the case of U.S. banks and \$100,000,000 (or the foreign currency equivalent thereof as of the date of determination) in the case of non-U.S. banks;

(4) repurchase obligations for underlying securities of the types described in clauses (2), (3) and (7) of this definition entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper rated at least "P-1" by Moody's or at least "A-1" by S&P, and in each case maturing within 24 months after the date of creation thereof and Indebtedness or preferred stock issued by Persons with a rating of "A" or higher from S&P or "A-2" or higher from Moody's, with maturities of 24 months or less from the date of acquisition;

(6) marketable short-term money market and similar securities having a rating of at least "P-2" or "A-2" from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower) and in each case maturing within 24 months after the date of creation or acquisition thereof;

(7) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an



Investment Grade Rating from Moody's or S&P with maturities of 24 months or less from the date of acquisition;

(8) readily marketable direct obligations issued by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from Moody's or S&P with maturities of 24 months or less from the date of acquisition;

(9) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated within the top three ratings category by S&P or Moody's;

(10) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-1" or the equivalent thereof or from Moody's is at least "P-1" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than 270 days from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank;

(11) Cash Equivalents of the types described in clauses (1) through (10) above denominated in Dollars, Euro or any other currency (other than Dollars) that is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars or, solely to the extent held in the ordinary course of business and not for speculative purposes, any currency in which the Borrower and/or its Restricted Subsidiaries regularly conducts business; and

(12) investment funds investing at least 90% of their assets in Cash Equivalents of the types described in clauses (1) through (11) above.

"Cash Management Bank" means any financial institution providing treasury, depository, credit or debit card, purchasing card, and/or cash management services or automated clearing house transactions to the Borrower or any Restricted Subsidiary or conducting any automated clearing house transfers of funds; provided that, if such financial institution is not an Agent or a Lender, such financial institution executes and delivers to the Administrative Agent and the Borrower a letter agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower pursuant to which such financial institution (a) appoints the Administrative Agent as its agent under the applicable Loan Documents and (b) agrees to be bound by Section 9.07 of this Agreement and the applicable provisions of the Security Agreement, in each case, as if it were a Lender.

“Cash Management Obligations” means obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank in respect of any overdraft and related liabilities arising from treasury, depository, credit or debit card, purchasing card, or cash management services or any automated clearing house transfers of funds.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“CFC” means any Foreign Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means any of the following events: (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than a Permitted Holder, shall have become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 of the Exchange Act), directly or indirectly, of voting stock of the Borrower (or other securities convertible into such voting stock) representing at least forty percent (40%) of the combined voting power of all voting stock of the Borrower or (b) the occurrence of a “change in control” (or similar event, however denominated) with respect to the Borrower under and as defined in any indenture or other agreement or instrument evidencing or governing the rights of the holders of the Convertible Notes or the Borrower’s Series A Convertible Preferred Stock.

“Charges” has the meaning set forth in Section 10.28.

“City Code” has the meaning specified under Section 1.09(a).

“Class” (a) when used with respect to Commitments, refers to whether such Commitments are Initial Revolving Credit Commitments, Initial Term Commitments or any other “Class” of Extended Revolving Credit Commitments, Incremental Revolving Credit Commitments, Commitments in respect of Extended Term Loans or Commitments in respect of Incremental Term Loans, (b) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Initial Revolving Credit Loans, Initial Term Loans or any other “Class” of Loans made pursuant to Extended Revolving Credit Commitments, Loans made pursuant to

Incremental Revolving Credit Commitments, Extended Term Loans or Incremental Term Loans and (c) when used with respect to any Lender, refers to whether such Lender has a Commitment or Loan of a particular Class.

“Closing Date” means the date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“CME” means CME Group Benchmark Administration Limited.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Collateral” means all the “Collateral” as defined in the Collateral Documents and all other property of whatever kind and nature pledged or charged as collateral under any Collateral Document.

“Collateral Agent” means Bank of America, in its capacity as collateral agent under any of the Loan Documents, or any successor collateral agent appointed in accordance with Section 9.09.

“Collateral and Guarantee Requirement” means, at any time, the requirement that, in each case subject to the limitations and qualifications set forth herein or in any other Loan Documents:

(a) the Collateral Agent shall have received each Collateral Document required to be delivered pursuant to Section 4.01, Section 6.10 or Section 6.12, duly executed by each Loan Party that is a party thereto;

(b) all Obligations shall have been unconditionally guaranteed (the “Guarantees”), jointly and severally, by (i) the Borrower and (ii) each Restricted Subsidiary (other than any Excluded Subsidiary);

(c) the Obligations and the Guarantees shall have been secured pursuant to the Security Agreement and any other applicable Collateral Documents by a first priority security interest in all of the Equity Interests (other than Excluded Equity) held directly by the Borrower or any other Guarantor in any Restricted Subsidiary, in each case subject to Permitted Liens;

(d) (i) all Indebtedness owed by any Loan Party to any Restricted Subsidiary that is not a Loan Party shall be subordinated to the Obligations pursuant to the subordination provisions in the Global Intercompany Note or on terms at least as favorable to the Lenders as those set forth in the Global Intercompany Note and (ii) all Indebtedness of any Person that is owing to any Loan Party shall be pledged pursuant to the Security Agreement and, to the extent required by the Security Agreement, evidenced by a promissory note and delivered to the Collateral Agent;

(e) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guarantees shall have been secured by a perfected security interest (to the extent such security interest may be perfected by delivering and/or granting possession or control of certificated securities and instruments, filing personal property financing statements or filing intellectual property security agreements with the United States Patent and Trademark Office or United States Copyright Office) in the Article 9 Collateral (as defined in the

Security Agreement) with the priority required by the Collateral Documents, and all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements, required by the Collateral Documents or reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by the Collateral Documents and perfect such Liens to the extent required by, and with the priority required by, the Collateral Documents and the other provisions of the term “Collateral and Guarantee Requirement,” shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or recording;

(f) none of the Collateral shall be subject to any Liens other than Permitted Liens; and

(g) in the event any Guarantor is added that is organized in a jurisdiction other than the U.S., such Guarantor shall grant a perfected Lien on its assets (in scope customary in such jurisdiction) to the Collateral Agent and any Loan Party that owns the Equity Interests of such Guarantor shall grant a perfected Lien over such Equity Interests to the Collateral Agent, in each case, pursuant to arrangements as reasonably agreed between the Administrative Agent and the Borrower (including foreign security) and subject to customary limitations and exclusions in such jurisdiction to be reasonably agreed to between the Administrative Agent and the Borrower.

The foregoing definition shall not require the creation or perfection of pledges of or security interests in, particular assets if and for so long as the Administrative Agent and the Borrower agree in writing that the cost of creating or perfecting such pledges or security interests in such assets shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom.

The Administrative Agent may grant extensions of time for the perfection of security interests with respect to particular assets where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) other than as provided in clause (g) above, Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall only be granted under the Collateral Documents governed by the laws of the United States, any state thereof or the District of Columbia;

(B) other than as provided in clause (g) above, the Collateral and Guarantee Requirement shall not apply to, and the definition of “Collateral” and definitions of and references to asset categories in the definition of Collateral in this Agreement or in any Collateral Document shall not include, Excluded Property;

(C) no deposit account control agreements, securities account control agreements or other control agreements or control arrangements shall be required with respect to any deposit account, securities account or other asset specifically requiring perfection through control agreements;

(D) other than as provided in clause (g) above, no actions in any jurisdiction other than the U.S. or that are necessary to comply with the Laws of any jurisdiction other than the U.S. shall be required in order to create any security interests in assets located, titled, registered or filed outside of the U.S. or to perfect such security interests (it being understood that, other than as provided in clause (g) above, there shall be no security agreements, pledge agreements or share charge (or mortgage) agreements governed under the Laws of any jurisdiction other than the U.S.);

(E) general statutory limitations, financial assistance, corporate benefit, capital maintenance rules, fraudulent preference, “thin capitalization” rules, retention of title claims and similar principle may limit the ability of a Foreign Subsidiary to provide a Guarantee or Collateral or may require that the Guarantee or Collateral be limited by an amount or otherwise, in each case as reasonably determined by the Borrower in consultation with the Administrative Agent;

(F) no stock certificates of Immaterial Subsidiaries shall be required to be delivered to the Collateral Agent; and

(G) no Loan Party will be required to make any filings or take any actions to record or to perfect the Collateral Agent’s security interest in (1) any IP Rights other than UCC filings and the filing of documents effecting the recordation of security interests in the United States Copyright Office or United States Patent and Trademark Office or (2) any non-United States IP Rights (except as provided in clause (g) above to the extent owned by a Foreign Loan Party).

“Collateral Documents” means, collectively, the Security Agreement, each of the collateral assignments, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Collateral Agent and the Lenders pursuant to Section 4.01, Section 6.10 or Section 6.12, the Guaranty and each of the other agreements, instruments or documents that creates or purports to create a Lien or Guarantee in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Obligations.

“Commitment” means an Initial Revolving Credit Commitment, an Initial Term Commitment, an Extended Revolving Credit Commitment, an Incremental Revolving Credit Commitment, a commitment in respect of any Extended Term Loans or a commitment in respect of any Incremental Term Loans, as the context may require.

“Commitment Fee” has the meaning provided in Section 2.09(a).

“Committed Loan Notice” means a written notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other or (c) a continuation of a Term SOFR Loan pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A hereto or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and agreed by the Borrower), appropriately completed and signed by a Responsible Officer of the Borrower.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Common Stock” means the Class A common stock, par value \$0.0001 per share, of the Borrower.

“Communication” means this Agreement, any Loan Document and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

“Compensation Period” has the meaning specified in Section 2.12(c)(ii).

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, “Term SOFR”, “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day”, “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the reasonable discretion of the Administrative Agent, in consultation with the Borrower, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent reasonably determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines, in consultation with the Borrower, is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Consolidated EBITDA” means, with respect to the Borrower and its Restricted Subsidiaries for any period, determined on a consolidated basis, Consolidated Net Income for such period:

(a) increased (without duplication) by the following, in each case to the extent deducted and not added back in arriving at Consolidated Net Income (other than in respect of clause (xi) and clause (xii) below):

(i) total interest expense and, to the extent not reflected in such total interest expense, (A) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate or foreign currency risk, net of interest income, and gains on such hedging obligations or such derivative instruments, (B) bank and letter of credit fees, commissions, discounts, charges and costs of surety bonds in connection with financing activities, (C) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, and (D) the interest component of Capitalized Lease Obligations or finance lease obligations; plus

(ii) provision for Taxes based on income, profits, revenues or capital, including federal, foreign and state income, franchise, excise, value added and similar Taxes and foreign withholding Taxes paid or accrued during such period (including in

respect of repatriated funds), including penalties and interest related to such Taxes or arising from any Tax examinations; plus

(iii) depreciation and amortization (including amortization of capitalized software expenditures and other intangibles and amortization of deferred financing fees or costs); plus

(iv) other non-cash charges, losses or expenses (including stock option expense and impairment charges) (provided, in each case, that (A) if any non-cash charges, losses or expenses represent an accrual or reserve for potential cash items in any future period, (1) the Borrower may elect not to add back such non-cash charges, losses or expenses in the current period and (2) to the extent the Borrower elects to add back such non-cash charges, losses or expenses in the current period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and (B) amortization of a prepaid cash item that was paid in a prior period shall not be added back); plus

(v) the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-Wholly Owned Subsidiary, excluding cash distributions in respect thereof; plus

(vi) losses or discounts on sales of receivables and related assets in connection with any Permitted Receivables Financing; plus

(vii) fees and expenses and other cash charges incurred during such period, or any amortization thereof for such period in connection with any acquisition, divestiture, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument or as a result of other restructuring, separation, integration and transition activities and any charges or non-recurring costs incurred during such period as a result of any such transaction, including retention and integration costs and transaction-related compensation, earn-out obligations and indemnity payments, in each case whether or not successful and including in any event in connection with the Transactions; plus

(viii) any extraordinary, exceptional, unusual or non-recurring charges, expenses or losses for such period (including relating to the Transactions) and any charges, expenses or reserves in respect of any restructuring, relocation, redundancy, severance or retention costs, litigation costs, costs associated with new business or cost savings initiatives, new product introduction costs, costs associated with facilities closures, other business optimization expenses and one-time compensation charges; plus

(ix) any loss on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business) or loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of) and any corporate charges, overhead and similar

costs previously allocated to any discontinued business but not included within discontinued operations; plus

(x) any losses for such period attributable to the early extinguishment of Indebtedness, hedging agreements or other derivative instruments; plus

(xi) the amount of “run rate” cost savings, cost synergies, operating improvements and operating expense reductions (including costs to achieve such cost savings, cost synergies, operating improvements and operating expense reductions) related to business combinations, acquisitions, mergers, divestitures, restructurings, cost savings initiatives and other similar initiatives of the Borrower that are reasonably identifiable and factually supportable and projected by the Borrower reasonably and in good faith to result from actions that have been taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the reasonable and good faith determination of the Borrower) within 12 months after such business combination, acquisition, merger, divestiture, restructuring, cost savings initiative or other similar initiative is consummated or initiated (as applicable), net of the amount of actual benefits realized during such period from such actions, in each case calculated on a pro forma basis as though such cost savings, cost synergies, operating improvements and operating expense reductions had been realized on the first day of such period for which Consolidated EBITDA is being determined and as if such cost savings, cost synergies, operating improvements and operating expense reductions were realized during the entirety of such period; provided that the aggregate amount added back pursuant to this clause (xi) for any period shall not exceed 25% of Consolidated EBITDA for such period (calculated after giving effect to any such add backs and all other add backs for such period and calculated on a Pro Forma Basis), plus

(xii) adjustments evidenced by or contained in a due diligence quality of earnings report made available to the Administrative Agent and prepared with respect to the target of a Permitted Acquisition or other Investment permitted hereunder by (x) a “big four” nationally recognized accounting firm or (y) any other accounting firm that shall be reasonably acceptable to the Administrative Agent,

(b) decreased (without duplication) by the following, to the extent included in arriving at such Consolidated Net Income:

(i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period); plus

(ii) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-Wholly Owned Subsidiary added (and not deducted in such period from Consolidated Net Income); plus

(iii) any gain on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business) or income from



discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of); plus

(iv) any extraordinary, exceptional, unusual or non-recurring gains for such period;

(c) increased or decreased (without duplication) by, as applicable, any adjustments resulting from the application of Accounting Standards Codification Topic 460 or any comparable regulation; and

(d) increased or decreased (to the extent not already included in determining Consolidated EBITDA) by any Pro Forma Adjustment;

provided that there shall be included in determining Consolidated EBITDA for any period the Acquired EBITDA of any Person, property, business or asset acquired by the Borrower or any Restricted Subsidiary during such period (but not the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed by the Borrower or such Restricted Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an “Acquired Entity or Business”) and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a “Converted Restricted Subsidiary”), based on the actual Acquired EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition); provided that the Borrower may choose not to make such an adjustment with respect any acquisition having consideration in an amount less than \$25,000,000. There shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of, or closed or classified as discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of) by the Borrower or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold or disposed of, a “Sold Entity or Business”) and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a “Converted Unrestricted Subsidiary”), based on the actual Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer or disposition).

“Consolidated Interest Expense” means, with respect to the Borrower and its Restricted Subsidiaries for any period, determined on a consolidated basis in accordance with GAAP, the sum of (without duplication):

(a) consolidated interest expense of the Borrower and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (i) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, (ii) all commissions, discounts and

other fees and charges owed with respect to letters of credit or bankers acceptances, (iii) non-cash interest payments, (iv) the interest component of Capitalized Lease Obligations and (v) net payments, if any, pursuant to interest rate obligations under any Swap Contracts with respect to Indebtedness); plus

- (b) consolidated capitalized interest of the Borrower and its Restricted Subsidiaries for such period, whether paid or accrued; less
- (c) 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 Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, for any period, the net income (loss) of the Borrower and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; provided, however, that there will not be included in such Consolidated Net Income:

- (a) any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that the Borrower’s equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed as a dividend or other distribution or return on investment;

- (b) any net income (or loss) from abandoned or discontinued operations and any net gain (or loss) on disposal of disposed, abandoned or discontinued operations;

- (c) any net gain (or loss) realized upon the sale or other disposition of any asset or disposed operations of the Borrower or any Restricted Subsidiary (including pursuant to any sale/leaseback transaction) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by a Responsible Officer of the Borrower or the board of directors of the Borrower);

- (d) the cumulative effect of a change in accounting principles;

- (e) income (loss) attributable to deferred compensation plans or trusts;

- (f) all deferred financing costs written off and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness, and any net gain (loss) from any write-off or forgiveness of Indebtedness;

- (g) any unrealized gains or losses in respect of any obligations under any Swap Contracts or other derivative instruments or any ineffectiveness recognized in earnings related to hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of any obligations under any Swap Contracts;

(h) any unrealized foreign currency translation gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;

(i) any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary owing to the Borrower or any Restricted Subsidiary;

(j) any non-cash purchase accounting effects including, but not limited to, adjustments to inventory, property and equipment, loans and leases, software and other intangible assets and deferred revenue (including deferred costs related thereto and deferred rent) in component amounts required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of any consummated acquisition or investment, or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);

(k) any impairment charge, write-down or write-off, including impairment charges, write-downs or write-offs relating to goodwill, intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation; and

(l) any net unrealized gains and losses resulting from the application of Accounting Standards Codification Topic 815 and related pronouncements.

In addition, to the extent not already excluded from the Consolidated Net Income, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall exclude (i) any expenses and charges that are reimbursed by indemnification or other reimbursement provisions in connection with any investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder (it being understood and agreed that if the Borrower or the applicable Restricted Subsidiary has notified a third party of such amount to be reimbursed or indemnified and such third party has not denied its reimbursement or indemnification obligation, such amounts shall also be excluded) and (ii) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (A) not denied by the applicable carrier in writing within 180 days and (B) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within such 365 days), expenses with respect to liability or casualty events or business interruption.

“Consolidated Total Debt” means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with any Permitted Acquisition or other Investment), to the extent such Indebtedness consists of Indebtedness for borrowed money, Disqualified Equity Interests, Capitalized Lease Obligations and debt obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments; provided that

Consolidated Total Debt shall not include (x) obligations under Swap Contracts entered into in the ordinary course of business and not for speculative purposes, (y) Indebtedness in respect of any Permitted Receivables Financing and (z) surety, stay, customs and appeal bonds, performance bonds and other similar obligations.

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

“Control” has the meaning specified in the definition of “Affiliate.”

“Converted Restricted Subsidiary” has the meaning specified in the definition of “Consolidated EBITDA.”

“Converted Unrestricted Subsidiary” has the meaning specified in the definition of “Consolidated EBITDA.”

“Convertible Notes” means (a) the Borrower’s 0% Convertible Senior Notes due 2025 and (b) the Borrower’s 0% Convertible Senior Notes due 2026.

“Covenant Toggle” has the meaning specified in Section 7.11(b).

“Covered Entity” has the meaning specified in Section 10.27(b).

“Covered Party” has the meaning specified in Section 10.27(a).

“Credit Extension” means a Borrowing or an L/C Credit Extension, as the context may require.

“Daily Simple SOFR” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

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

“Declined Proceeds” has the meaning specified in Section 2.05(b)(v).

“Default” means an Event of Default or any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) with respect to any overdue principal for any Loan, the applicable interest rate for such Loan plus 2.00% per annum and (b) with respect to any other overdue amount, including overdue interest, the interest rate applicable to Base Rate Loans plus 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Default Rights” has the meaning specified in Section 10.27(b).

“Defaulting Lender” means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans required to be funded by it, (ii) fund any portion of its participations in Letters of Credit required to be funded by it or (iii) pay over to the Administrative Agent, the L/C Issuer or any other Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent, the L/C Issuer or any other Lender in writing that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan cannot be satisfied), (c) has failed, within three (3) Business Days after request by the Administrative Agent, the L/C Issuer or any other Lender, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Administrative Agent’s, L/C Issuer’s or Lender’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, (d) has become the subject of a Bankruptcy Event or (e) has become the subject of a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to the last paragraph of Section 2.16) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer and each other Lender promptly following such determination.

“Delayed Draw Termination Date” means the date that is nine months after the Closing Date.

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 7.05(m) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation.

“Disclosure Letter” means the disclosure letter, dated as of the Closing Date, delivered by the Borrower to the Administrative Agent, as amended or supplemented from time to time pursuant to the terms of the Loan Documents.

“Disposed EBITDA” means, with respect to any Sold Entity or Business or any Converted Unrestricted Subsidiary for any period, the portion of Consolidated EBITDA for such period attributable to such Sold Entity or Business or such Converted Unrestricted Subsidiary, all as determined on a consolidated basis for such Sold Entity or Business or such Converted Unrestricted Subsidiary.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale Leaseback and any sale of Equity Interests of another Person) of any property by any

Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith; provided that (i) “Disposition” and “Dispose” shall not be deemed to include any issuance by the Borrower of any of its Equity Interests to another Person and (ii) no transaction or series of related transactions shall be considered a “Disposition” for purposes of Section 2.05(b)(ii) or Section 7.05 unless the fair market value (as determined in good faith by the Borrower) of the property disposed of in such transaction or series of transactions shall exceed the greater of (x) \$18,750,000 and (y) 5.0% of LTM Consolidated EBITDA, determined as of the date of each such transaction.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests and cash in lieu of fractional shares), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of all Commitments and all outstanding Letters of Credit (or cash collateral or other arrangements provided therefor)), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and cash in lieu of fractional shares), in whole or in part, (except as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of all Commitments and all outstanding Letters of Credit (or cash collateral or other arrangements provided therefor)), (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case of the foregoing clauses (a) through (d), prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time such Equity Interests are issued; provided that (i) if Equity Interests are issued pursuant to a plan for the benefit of the Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations and (ii) the Borrower’s Series A Convertible Preferred Stock, as in existence on the Closing Date, shall not constitute Disqualified Equity Interests.

“Disqualified Lenders” means (a) such Persons that have been specified in writing to the Arrangers by the Borrower prior to the Closing Date, (b) competitors of the Borrower and its Subsidiaries that have been specified in writing to the Administrative Agent from time to time by the Borrower and (c) in the case of any Person identified pursuant to clause (a) or (b) above, any of its Affiliates (other than, in the case of any Person identified pursuant to clause (b) above, Affiliates that are bona fide debt funds) that is (x) identified in writing from time to time to the Administrative Agent by the Borrower or (y) clearly identifiable on the basis of such Affiliate’s name; provided that no such updates to the list shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation interest in respect of the Loans from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Lenders (it being understood and agreed that such prohibitions with respect to Disqualified Lenders shall apply to any potential future assignments or participations to any such parties). The schedule of Disqualified

Lenders shall be maintained with the Administrative Agent and may be posted to the Platform or otherwise be made available to Lenders.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Foreign Holding Company” means any Domestic Subsidiary that owns no material assets (directly or through one or more disregarded entities) other than capital stock (including any Indebtedness that is treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs.

“Domestic Loan Party” means any Loan Party organized under the laws of the United States, any state thereof or the District of Columbia.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia.

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

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

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

“Electronic Copy” has the meaning specified in Section 10.24 hereof.

“Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

“Eligible Assignee” means any Assignee permitted by and consented to in accordance with Section 10.07(b).

“Environment” means ambient air, indoor or outdoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetlands, flora and fauna.

“Environmental Laws” means any and all applicable Laws relating to pollution, protection of the Environment or to the generation, transport, storage, use, treatment, handling, disposal, Release or threat of Release of any Hazardous Materials or, to the extent relating to exposure to Hazardous Materials, human health or safety.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) directly or indirectly resulting from or based upon (a) any Environmental Law, (b) the generation, use, handling, transportation, storage, disposal or treatment of any Hazardous Materials, (c) exposure of any Person to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement to the extent liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing; provided that Equity Interests shall not include (a) any debt securities that are convertible into or exchangeable for any combination of Equity Interests and/or cash (or other securities or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) (including, for the avoidance of doubt, any Permitted Convertible Indebtedness), (b) any Permitted Call Spread Transaction or (c) any Permitted Forward Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with a Loan Party or any Restricted Subsidiary within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate of liability with respect to a complete or partial withdrawal from a Multiemployer Plan or the notification of a Loan Party, any Restricted Subsidiary or any ERISA Affiliate that a Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate a Pension Plan in a distress termination described in Section 4041(c) of ERISA, the notification of a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, the treatment of a Pension Plan amendment as a termination under Section 4041 of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 or 430 of the Code or Section 302 or 303 of ERISA, whether or not waived; (g) a failure by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate to make a required contribution to a Multiemployer Plan; (h) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) with respect to



any Plan which could result in liability to a Loan Party or any Restricted Subsidiary; (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due under Section 4007 of ERISA, upon a Loan Party, any Restricted Subsidiary or any ERISA Affiliate; or (j) a Foreign Benefit Event.

“Escrow” means an escrow, trust, collateral or similar account or arrangement with a third party that is not the Borrower or any of its Restricted Subsidiaries or any Affiliate thereof.

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

“Event of Default” has the meaning specified in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Accounts” means (a) payroll accounts, accounts used for employee withholding tax and benefit payments and similar accounts, (b) trust accounts, fiduciary accounts, escrow accounts, custodial accounts and similar accounts, (c) cash collateral accounts subject to Liens permitted by Section 7.01(ii) and (d) in the case of clauses (a) through (c), the funds or other property held in or maintained in any such account.

“Excluded Equity” means Equity Interests (a) of any Unrestricted Subsidiary, (b) of any Subsidiary acquired pursuant to a Permitted Acquisition or other Investment if such Equity Interests are pledged and/or mortgaged as security for Indebtedness permitted by Section 7.03(v) and if and for so long as the terms of such Indebtedness prohibit the creation of any other Lien on such Equity Interests (and which prohibition was not created in contemplation of such Permitted Acquisition or other Investment), (c) of any Foreign Subsidiary or Domestic Foreign Holding Company (in each case other than the Equity Interests of a Guarantor not otherwise constituting Excluded Equity) in excess of 65% of the issued and outstanding Equity Interests of each such Foreign Subsidiary or Domestic Foreign Holding Company (and of any Subsidiary of such Foreign Subsidiary or Domestic Foreign Holding Company), (d) of any Subsidiary with respect to which the Administrative Agent and the Borrower have determined in their reasonable judgment and agreed in writing that the costs of providing a pledge of such Equity Interests or perfection thereof is excessive in view of the benefits to be obtained by the Secured Parties therefrom, (e) of any captive insurance companies, not-for-profit Subsidiaries, special purpose entities (including any entity used to effect a Permitted Receivables Financing), (f) of any non-Wholly Owned Restricted Subsidiary that is not a Loan Party, to the extent prohibited by the organization documents or investor documents thereof, (g) [reserved], (h) in any joint venture or other Person (other than a Wholly Owned Subsidiary or a Loan Party), to the extent prohibited by the organization documents or investor documents thereof, and (i) of any Foreign Subsidiary (other than any Guarantor) the pledge of which is prohibited by applicable Laws or which would reasonably be expected to result in a violation or breach of, or conflict with, fiduciary duties of such Subsidiary’s officers, directors or managers.

“Excluded Property” means (a) any fee-owned real property or leasehold interests in real property, (b) (i) motor vehicles and other assets subject to certificates of title to the extent a Lien thereon cannot be perfected by the filing of a UCC financing statement (or analogous procedures under applicable Laws in the relevant jurisdiction in the case of jurisdictions other than the U.S.), (ii) letter of credit rights to the extent a Lien thereon cannot be perfected by the filing of a UCC financing statement (or analogous

procedures under applicable Laws in the relevant jurisdiction in the case of jurisdictions other than the U.S.) and (iii) commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$1,000,000, (c) assets for so long as a pledge thereof or a security interest therein is prohibited by applicable Laws, after giving effect to the applicable anti-assignment clauses of the Uniform Commercial Code and applicable Laws, (d) margin stock, (e) Excluded Accounts, (f) any lease, license or other agreement, or any property subject to a purchase money security interest, Capitalized Lease Obligation or similar arrangement, in each case to the extent permitted under the Loan Documents, to the extent that a pledge thereof or a security interest therein would violate or invalidate such lease, license or agreement, or property or create a right of termination in favor of any other party thereto (other than the Borrower or a Guarantor) after giving effect to the applicable anti-assignment clauses of the Uniform Commercial Code and applicable Laws, other than the proceeds and receivables thereof the assignment of which is expressly deemed effective under applicable Laws notwithstanding such prohibition, (g) assets for which a pledge thereof or security interest therein would result in a material adverse tax consequence as reasonably determined by the Borrower (in consultation with (but without the consent of) the Administrative Agent); provided that nothing in this clause (g) shall limit the pledge of assets by a Foreign Subsidiary that is a Guarantor without the Administrative Agent's consent, (h) assets for which the Administrative Agent and the Borrower have determined in their reasonable judgment and agree in writing that the cost of creating or perfecting such pledges or security interests therein would be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (i) any intent-to-use trademark application in the United States prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant, attachment, or enforcement of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable U.S. federal law, (j) Excluded Equity, (k) [reserved] and (l) any governmental licenses or state or local franchises, charters or authorizations, to the extent a security interest in any such license, franchise, charter or authorization would be prohibited or restricted thereby (including any legally effective prohibition or restriction, but excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code or other applicable Law).

"Excluded Subsidiary." means (a) any Subsidiary that is prohibited by applicable Law or by any contractual obligation existing on the Closing Date (or, if later, the date such Subsidiary first becomes a Subsidiary) from guaranteeing the Obligations (and in the case of such contractual obligation, not entered into in contemplation of the acquisition of such Subsidiary) or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee unless such consent, approval, license or authorization has been received, (b) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition or other similar Investment permitted hereunder that, at the time of such Permitted Acquisition or other similar Investment, has assumed or is obligated on secured Indebtedness not incurred in contemplation of such Permitted Acquisition or other similar Investment and each Restricted Subsidiary that is a Subsidiary thereof that guarantees such Indebtedness, in each case, to the extent such secured Indebtedness prohibits such Restricted Subsidiary from guaranteeing the Obligations (provided that each such Restricted Subsidiary shall cease to be an Excluded Subsidiary under this clause (b) if such secured Indebtedness is repaid or becomes unsecured, such Restricted Subsidiary ceases to be an obligor with respect to such secured Indebtedness or such prohibition no longer exists, as applicable), (c) any Immaterial Subsidiary or Unrestricted Subsidiary, (d) captive insurance companies, (e) not-for-profit Subsidiaries, (f) special purpose entities, (g) subject to Section 9.11, any non-Wholly Owned Subsidiary, (h) any Domestic Foreign Holding Company, (i) any Foreign Subsidiary, (j) any Domestic Subsidiary of a Foreign Subsidiary that is (i) a CFC and (ii) not a Loan Party that

directly owns such Domestic Subsidiary and (k) any other Subsidiary with respect to which the Administrative Agent and the Borrower have determined in their reasonable judgment, and agree in writing, that the cost or other consequences (including any adverse tax consequences; provided that with respect to adverse tax consequences the determination shall be made by the Borrower in consultation with (but without the consent of) the Administrative Agent) of providing a Guarantee shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom; in the case of each clause of this definition, unless such Subsidiary is designated by the Borrower as a Guarantor pursuant to the definition of “Guarantors”. The Excluded Subsidiaries as of the Closing Date are set forth on Schedule 1.01C to the Disclosure Letter.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the Guarantee of such Guarantor or the grant of such security interest would otherwise have become effective with respect to such related Swap Obligation but for such Guarantor’s failure to constitute an “eligible contract participant” at such time. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means, with respect to any Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, by any jurisdiction as a result of a present or former connection of such Agent, Lender, L/C Issuer or other recipient, as the case may be, with such jurisdiction (including as a result of being resident or being deemed to be resident, being organized, maintaining an Applicable Lending Office or carrying on business or being deemed to carry on business in such jurisdiction) other than any connection arising solely from any Loan Documents or any transactions contemplated thereby, (b) any U.S. federal withholding Taxes imposed on amounts payable to any Lender pursuant to a Law in effect at the time such Lender becomes a party in this Agreement (other than pursuant to an assignment request by the Borrower under Section 3.06(a)) or designates a new Applicable Lending Office, except to the extent such Lender’s assignor was entitled immediately prior to the assignment, or such Lender was entitled immediately before it designated a new Applicable Lending Office, to receive additional amounts from any Loan Party with respect to such Taxes pursuant to Section 3.01(a), (c) any withholding Tax resulting from a failure of such recipient to comply with Section 3.01(f) or Section 3.01(g), as applicable, (d) any U.S. federal withholding Tax imposed pursuant to FATCA and (e) any U.S. federal backup withholding imposed pursuant to Section 3406 of the Code.

“Extended Revolving Credit Commitment” has the meaning specified in Section 2.15(a).

“Extended Term Loans” has the meaning specified in Section 2.15(a).

“Extending Revolving Credit Lender” has the meaning specified in Section 2.15(a).

“Extension” has the meaning specified in Section 2.15(a).

“Extension Offer” has the meaning specified in Section 2.15(a).

“Facility” means the Initial Revolving Credit Facility, the Initial Term Facility and any other Class of Commitments and Loans made hereunder.

“FATCA” means current Sections 1471 through 1474 of the Code (and any amended or successor version that is substantively comparable and not materially more onerous to comply with) or any current or future Treasury regulations with respect thereto or other official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements (and any related Law) implementing the foregoing.

“FCPA” means the United States Foreign Corrupt Practices Act of 1977, as amended.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fixed Amounts” has the meaning specified in Section 1.09(b).

“Foreign Benefit Event” means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable Law or in excess of the amount that would be permitted absent a waiver from the applicable Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable Law, on or before the due date for such contributions or payments, (c) the receipt of a notice by the applicable Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence by any Loan Party or any Restricted Subsidiary of any liability under applicable Law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein or (e) the occurrence of any transaction with an interested party that is prohibited under any applicable Law and that could reasonably be expected to result in the incurrence of any liability by any Loan Party or any Restricted Subsidiary, or the imposition on any Loan Party or any Restricted Subsidiary of any fine, excise tax or penalty resulting from any noncompliance with any applicable Law.

“Foreign Loan Party” means any Loan Party that is not a Domestic Loan Party.

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to or by, or entered into with, any Loan Party or any Restricted Subsidiary with respect to employees outside the United States.

“Foreign Subsidiary” means any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Fee” has the meaning specified in Section 2.03(h).

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States, as in effect from time to time; provided that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted in accordance with GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“Global Intercompany Note” means that certain Global Intercompany Note, dated as of the Closing Date, made by the Borrower and the Subsidiaries party thereto.

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

“Granting Lender” has the meaning specified in Section 10.07(h).

“Guarantee Obligations” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not

such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term “Guarantee Obligations” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, customary warranty obligations or customary and reasonable indemnity obligations. The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guarantees” has the meaning specified in clause (b) of the definition of “Collateral and Guarantee Requirement.”

“Guarantors” means the Borrower and each Subsidiary party to the Guaranty. For the avoidance of doubt, the Borrower in its sole discretion may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute and deliver to the Administrative Agent a Guaranty Supplement (as defined in the Guaranty), and any such Restricted Subsidiary shall thereafter be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes; provided that (a) if such Restricted Subsidiary is a Foreign Subsidiary, the jurisdiction of organization of such Restricted Subsidiary shall be reasonably satisfactory to the Collateral Agent (taking into account, if acting as Collateral Agent or entering into Loan Documents with Subsidiaries in such jurisdiction is prohibited by applicable Law or would expose the Collateral Agent, in its capacity as such, to material additional liabilities) and (b) such Restricted Subsidiary shall have complied with the Collateral and Guarantee Requirement substantially concurrently with becoming a Guarantor. The Guarantors as of the Closing Date are set forth on Schedule 1.01D to the Disclosure Letter.

“Guaranty” means, collectively, (a) that certain Guaranty dated as of the Closing Date, by and among the Borrower, the Subsidiary Guarantors identified therein and the Administrative Agent and (b) each Guaranty Supplement delivered pursuant to Section 6.10.

“Guaranty Supplement” has the meaning specified in the Guaranty.

“Hazardous Materials” means all hazardous, toxic, explosive or radioactive substances or wastes, and all other chemicals, pollutants, contaminants, substances or wastes of any nature regulated pursuant to any Law relating to the Environment because of their hazardous, toxic, dangerous or deleterious characteristics or properties, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and toxic mold.

“Hedge Bank” means any Person that is (a) a Lender, an Agent, an Arranger or an Affiliate of the foregoing at the time it enters into a Secured Hedge Agreement, or (b) party to a Swap Contract with a Loan Party or any Restricted Subsidiary that is in effect as of the Closing Date, in its capacity as a party thereto; provided that in the case of clause (b), such Person executes and delivers to the Administrative Agent and the Borrower a letter agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower pursuant to which such Person (i) appoints the Administrative Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by Section 9.07 of this Agreement and the applicable provisions of the Security Agreement, in each case, as if it were a Lender.

“Honor Date” has the meaning specified in Section 2.03(c)(i).

“Immaterial Subsidiary” means, at any date of determination, each Restricted Subsidiary of the Borrower that has been designated by the Borrower in writing to the Administrative Agent as an “Immaterial Subsidiary” for purposes of this Agreement (and not redesignated as a Material Subsidiary as provided below), provided that (a) for purposes of this Agreement, at no time shall (i) (A) the assets of any Immaterial Subsidiary at the last day of the most recent Test Period equal or exceed 5% of the total assets of the Borrower and its Restricted Subsidiaries at such date or (B) the total assets of all Immaterial Subsidiaries at the last day of the most recent Test Period equal or exceed 10% of the total assets of the Borrower and its Restricted Subsidiaries at such date or (ii) (A) the gross revenues for such Test Period of any Immaterial Subsidiary equal or exceed 5% of the consolidated gross revenues of the Borrower and its Restricted Subsidiaries for such period, in each case determined on a consolidated basis in accordance with GAAP or (B) the gross revenues for such Test Period of all Immaterial Subsidiaries equal or exceed 10% of the consolidated gross revenues of the Borrower and its Restricted Subsidiaries for such period, in each case determined on a consolidated basis in accordance with GAAP, (b) the Borrower shall not designate any new Immaterial Subsidiary if such designation would not comply with the provisions set forth in clause (a) above, and (c) if the total assets or gross revenues of all Restricted Subsidiaries so designated by the Borrower as “Immaterial Subsidiaries” (and not redesignated as “Material Subsidiaries”) shall at any time exceed the limits set forth in clause (a) above, then all such Restricted Subsidiaries shall be deemed to be Material Subsidiaries unless and until the Borrower shall redesignate one or more Immaterial Subsidiaries as Material Subsidiaries, in each case in a written notice to the Administrative Agent, and, as a result thereof, the total assets and gross revenues of all Restricted Subsidiaries still designated as “Immaterial Subsidiaries” do not exceed such limits; and provided, further, that the Borrower may designate and re-designate a Restricted Subsidiary as an Immaterial Subsidiary at any time, subject to the terms set forth in this definition; and provided, further, that in no event shall a Restricted Subsidiary of the Borrower be designated as an “Immaterial Subsidiary” by the Borrower if the Borrower has caused such Restricted Subsidiary to be a Guarantor in accordance with the definition of “Guarantors.”

“Incremental Equivalent Debt” has the meaning specified in Section 7.03(t).

“Incremental Facilities” has the meaning specified in Section 2.14(a).

“Incremental Facility Amendment” has the meaning specified in Section 2.14(d).

“Incremental Facility Closing Date” has the meaning specified in Section 2.14(e).

“Incremental Incurrence Test” has the meaning specified in Section 2.14(a).

“Incremental Revolving Credit Commitments” has the meaning specified in Section 2.14(a).

“Incremental Revolving Lender” has the meaning specified in Section 2.14(e).

“Incremental Term A Loans” has the meaning specified in Section 2.14(a).

“Incremental Term B Loans” has the meaning specified in Section 2.14(a).

“Incremental Term Loans” has the meaning specified in Section 2.14(a).

“Incurrence Based Amounts” has the meaning specified in Section 1.09(b).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all letters of credit (including standby and commercial), banker’s acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) accounts payable and accrued obligations, in each case in the ordinary course of business, (ii) any earn-out obligation, deferred or contingent purchase price obligation or other similar obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and is not paid within thirty (30) days after becoming due and payable and (iii) obligations which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside in accordance with GAAP);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness;
- (g) all obligations of such Person in respect of Disqualified Equity Interests; and
- (h) all Guarantee Obligations of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation, company or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person’s liability for such Indebtedness is otherwise limited, (B) in the case of the Borrower and its Restricted Subsidiaries, exclude all intercompany Indebtedness or other obligations having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business and (C) exclude Indebtedness incurred in advance of, and the proceeds of which are to be applied in connection with, the consummation of a transaction solely to the extent the proceeds thereof are and continue to be held in an Escrow and are not otherwise made available to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the



Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) above shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith. Notwithstanding the foregoing and for the avoidance of doubt, no obligation of the Borrower in respect of any Permitted Call Spread Transaction or any Permitted Forward Agreement shall constitute Indebtedness.

“Indemnified Liabilities” has the meaning specified in Section 10.05(a).

“Indemnified Taxes” means (a) all Taxes, other than Excluded Taxes, imposed on or in respect of any payment made by or on account of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.05(a).

“Information” has the meaning specified in Section 10.08.

“Initial Revolving Credit Commitment” means, as to any Lender, its obligation to (a) make Initial Revolving Credit Loans to the Borrower pursuant to Section 2.01(b) or Section 2.03, as applicable and (b) purchase participations in L/C Obligations in respect of Letters of Credit, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01(b) under the caption “Initial Revolving Credit Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Initial Revolving Credit Commitments of all Revolving Credit Lenders shall be \$200,000,000 on the Closing Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

“Initial Revolving Credit Exposure” means, as to any Lender at any time, the sum of (a) the outstanding principal amount of all Initial Revolving Credit Loans held by such Lender (or its Applicable Lending Office) and (b) such Lender’s Revolving Credit Percentage of the L/C Obligations that is attributable to its Initial Revolving Credit Commitment.

“Initial Revolving Credit Facility” means the Initial Revolving Credit Commitments and the Initial Revolving Credit Loans.

“Initial Revolving Credit Lender” means, at any time, any Lender that has an Initial Revolving Credit Commitment or any Initial Revolving Credit Exposure at such time.

“Initial Revolving Credit Loans” has the meaning specified in Section 2.01(b).

“Initial Revolving Credit Maturity Date” means the fifth anniversary of the Closing Date, provided that if on any date that is 91 days prior to the final scheduled maturity date of any series of Convertible Notes, the aggregate principal amount of such maturing series of Convertible Notes that are outstanding on such date exceeds the Springing Maturity Threshold Amount as of such date, the Initial Revolving Credit Maturity Date shall automatically be modified to be the date that is 91 days prior to the final scheduled maturity date of such maturing series of Convertible Notes.

“Initial Term Commitments” means, as to any Lender, its obligation to make Initial Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01(a) under the caption “Initial Term Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The initial aggregate amount of the Initial Term Commitments is \$400,000,000.

“Initial Term Facility” means the Initial Term Commitments and the Initial Term Loans.

“Initial Term Lender” means, at any time, any Lender that has an Initial Term Commitment or an Initial Term Loan at such time.

“Initial Term Loan Availability Period” means the period from and including the Closing Date to and including the Delayed Draw Termination Date.

“Initial Term Loans” means the loans made by the Initial Term Lenders during the Initial Term Loan Availability Period to the Borrower pursuant to Section 2.01(a).

“Initial Term Maturity Date” means the fifth anniversary of the Closing Date, provided that if on any date that is 91 days prior to the final scheduled maturity date of any series of Convertible Notes, the aggregate principal amount of such maturing series of Convertible Notes that are outstanding on such date exceeds the Springing Maturity Threshold Amount as of such date, the Initial Term Maturity Date shall automatically be modified to be the date that is 91 days prior to the final scheduled maturity date of such maturing series of Convertible Notes.

“Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) LTM Consolidated EBITDA to (b) Consolidated Interest Expense, in each case for the Test Period most recently ended.

“Interest Payment Date” means, (a) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made and (b) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a Term SOFR Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall be Interest Payment Dates.

“Interest Period” means, as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one, three or six months thereafter, in each case as selected by the Borrower in its Committed Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

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

such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the applicable Maturity Date.

“Investment” means (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person (excluding, in the case of the Borrower and its Restricted Subsidiaries, intercompany loans, advances or 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), (b) a loan, advance or capital contribution to, Guarantee Obligation with respect to any Indebtedness of, or purchase or other acquisition of any other debt or equity participation in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Borrower and its Restricted Subsidiaries, intercompany loans, advances or 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) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by Fitch, Inc.

“IP Rights” has the meaning specified in Section 5.14.

“ISP” means with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Judgment Currency” has the meaning specified in Section 10.17.

“JV Entity” means any joint venture of the Borrower or any Restricted Subsidiary that is not a Subsidiary.

“Latest Maturity Date” means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including any Extended Revolving Credit Commitment, Incremental Revolving Credit Commitment, Extended Term Loan or Incremental Term Loan, in each case as extended in accordance with this Agreement from time to time.

“Laws” means, collectively, all international, foreign, federal, state, provincial and local laws (including common laws), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“L/C Advance” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Revolving Credit Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the applicable Honor Date or refinanced as a Revolving Credit Borrowing.

“L/C Commitments” means, as to any L/C Issuer, the obligation of such L/C Issuer to issue Letters of Credit for the account of the Borrower or one or more of its Restricted Subsidiaries from time to time in an aggregate amount equal to (a) for each of the L/C Issuers specified in clause (a) of the definition thereof, the amount set forth opposite the name of each such L/C Issuer on Schedule 2.01(b) under the caption “L/C Commitment” and (b) for any other L/C Issuer becoming an L/C Issuer after the Closing Date, such amount as separately agreed to in a written agreement between Borrower and such L/C Issuer (a copy of which shall be promptly delivered to the Administrative Agent upon execution), in each case of clauses (a) and (b) above, as any such amount may be changed after the Closing Date in a written agreement between Borrower and such L/C Issuer (which such agreement shall be promptly delivered to the Administrative Agent upon execution); provided that the L/C Commitment with respect to any Person that ceases to be an L/C Issuer for any reason pursuant to the terms hereof shall be \$0 (subject to the Letters of Credit of such Person remaining outstanding in accordance with the provisions hereof).

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“L/C Issuer” means (a) each Person listed on Schedule 2.01(b), and (b) any other Revolving Credit Lender (or any of its Subsidiaries or Affiliates) that becomes an L/C Issuer in accordance with Section 2.03(j) or Section 10.07(j); provided, that in the case of the L/C Issuers in clause (a) above, the commitment of any L/C Issuer to issue letters of Credit shall not exceed at any time its L/C Commitment. Each L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate and for all purposes of the Loan Documents.

“L/C Obligation” means, as at any date of determination, the aggregate maximum amount then available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts in respect of Letters of Credit, including all L/C Borrowings.

“LCT Election” has the meaning specified in Section 1.09(a).

“LCT Test Date” has the meaning specified in Section 1.09(a).

“Lender” has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes each L/C Issuer.

“Lender Recipient Party” has the meaning specified in Section 9.16.

“Lender-Related Persons” has the meaning specified in Section 10.05(b).

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Letter of Credit” means any letter of credit issued hereunder. A Letter of Credit may be a trade or commercial letter of credit or a standby letter of credit and shall be denominated in Dollars, provided that no L/C Issuer has an obligation to issue trade or commercial letters of credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant L/C Issuer.

“Letter of Credit Expiration Date” means the day that is five (5) Business Days prior to the scheduled Maturity Date then in effect for the Initial Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$25,000,000 and (b) the aggregate amount of the Revolving Credit Commitments.

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, deemed trust, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing).

“Limited Condition Transaction” means (a) any Permitted Acquisition or other Investment, including by way of merger, by the Borrower or one or more of its Restricted Subsidiaries, (b) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of indebtedness by the Borrower or one or more of its Restricted Subsidiaries requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment and (c) any declaration of a Restricted Payment by the Borrower or one or more of its Restricted Subsidiaries, in each case, that is not conditioned upon the availability of, or on obtaining, third party financing, and is permitted pursuant to this Agreement.

“Loan” means an extension of credit by a Lender to the Borrower under this Agreement in the form of a Term Loan or a Revolving Credit Loan (including any Initial Term Loans, Extended Term Loans, Incremental Term Loans, Initial Revolving Credit Loans, loans made pursuant to Extended Revolving Credit Commitments and loans made pursuant to Incremental Revolving Credit Commitments).

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Collateral Documents, (d) the Global Intercompany Note, (e) each Acceptable Intercreditor Agreement, (f) each Letter of Credit Application, (g) any Incremental Facility Amendment and any other documents entered into in connection with an Incremental Facility, (h) any amendment to this Agreement effectuating an Extension, (i) any other documents designated therein as a “Loan Document” by the

applicable Loan Party or Loan Parties and the other parties thereto and (j) any amendments, restatements, supplements, modifications or waivers of any of the foregoing.

“Loan Party” means any of the Borrower and each other Guarantor, and “Loan Parties” means, collectively, the Borrower and each other Guarantor.

“LTM Consolidated EBITDA” means, as of any date of determination, Consolidated EBITDA for the Test Period most recently ended, determined on a Pro Forma Basis.

“Master Agreement” has the meaning specified in the definition of “Swap Contract.”

“Material Acquisition” means any Acquisition that (a) involves the payment of consideration by the Borrower or any Restricted Subsidiary in the form of cash or Cash Equivalents in an amount equal to or greater than \$100,000,000 or (b) on a Pro Forma Basis, causes the Total Net Leverage Ratio to increase by 0.25 to 1.00 or more.

“Material Adverse Effect” means (a) a material adverse effect on the business, operations, assets, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole, (b) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which any of the Loan Parties is a party or (c) a material adverse effect on the rights and remedies of the Lenders or the Agents under any Loan Document.

“Material Subsidiary” means, at any date of determination, each Restricted Subsidiary of the Borrower that is not an Immaterial Subsidiary (and including, for the avoidance of doubt, any Restricted Subsidiary that has been designated as a Material Subsidiary as provided in, or that has been designated as an Immaterial Subsidiary in a manner that does not comply with, the definition of “Immaterial Subsidiary”).

“Maturity Date” means (a) with respect to the Initial Revolving Credit Facility, the Initial Revolving Credit Maturity Date, (b) with respect to the Initial Term Facility, the Initial Term Maturity Date and (c) with respect to any other Facility, the maturity date applicable to such Facility as may be agreed in accordance with the terms hereof; provided that if any such day is not a Business Day, the Maturity Date shall be the Business Day immediately preceding such day.

“Maximum Rate” has the meaning set forth in Section 10.28.

“Minimum Extension Condition” has the meaning specified in Section 2.15(b).

“Minimum Tranche Amount” has the meaning specified in Section 2.15(b).

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which a Loan Party, any Restricted Subsidiary or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six plan years, has made or been obligated to make contributions.

“Net Cash Proceeds” means:

(a) with respect to the Disposition of any asset by the Borrower or any Restricted Subsidiary or any Casualty Event, an amount equal to the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition or Casualty Event (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received and, with respect to any Casualty Event, any insurance proceeds or condemnation awards in respect of such Casualty Event actually received by or paid to or for the account of the Borrower or any Restricted Subsidiary) over (ii) the sum of (A) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by the asset subject to such Disposition or Casualty Event or owned by a Subsidiary that is not a Loan Party and that is required to be repaid (and is timely repaid) in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents and Indebtedness that is secured by Liens ranking junior to or *pari passu* with the Liens securing Obligations under the Loan Documents), (B) the out-of-pocket fees and expenses (including attorneys’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by the Borrower or a Restricted Subsidiary in connection with such Disposition or Casualty Event, (C) Taxes paid or reasonably estimated to be actually payable in connection therewith (including, for the avoidance of doubt, any income, withholding and other Taxes payable as a result of the distribution of such proceeds to the Borrower), and (D) any reserve for adjustment in respect of (x) the sale price of such asset or purchase price adjustment established in accordance with GAAP and (y) any liabilities associated with such asset and retained by the Borrower or any Restricted Subsidiary after such Disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or with respect to any indemnification obligations associated with such transaction, it being understood that “Net Cash Proceeds” shall (1) exclude any cash or Cash Equivalents received upon the Disposition of any non-cash consideration by the Borrower or any Restricted Subsidiary in any such Disposition, unless the Borrower was contractually obligated to make such subsequent Disposition at the time of the initial Disposition, and (2) include, upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in clause (D) above or if such liabilities have not been satisfied in cash and such reserve is not reversed within 365 days after such Disposition or Casualty Event, the amount of such reserve; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, the excess, if any, of (i) the sum of the cash received by Borrower or any Restricted Subsidiary in connection with such incurrence or issuance over (ii) the investment banking fees, underwriting discounts, commissions, Taxes, costs and other out-of-pocket expenses and other customary fees and expenses incurred by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance.

“Non-Consenting Lender” has the meaning specified in Section 3.06(d).

“Non-Extending Lender” has the meaning specified in Section 2.15(c).

“Non-Loan Party” means any Restricted Subsidiary of the Borrower that is not a Loan Party.

“Nonrenewal Notice Date” has the meaning specified in Section 2.03(b)(iii).

“Note” means a Term Note or a Revolving Credit Note as the context may require.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit B or such other form as may be approved by the Administrative Agent (including any form on the Platform), appropriately completed and signed by a Responsible Officer of the Borrower.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party or other Subsidiary arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and expenses that accrue after the commencement by or against any Loan Party or any other Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and expenses are allowed or allowable claims in such proceeding, (b) obligations of any Loan Party or any other Restricted Subsidiary arising under any Secured Hedge Agreement (other than any Excluded Swap Obligations) and (c) Cash Management Obligations. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of any of their Subsidiaries to the extent they have obligations under the Loan Documents) include (i) the obligation (including Guarantee Obligations) to pay principal, interest, Letter of Credit commissions, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts, in each case, payable by any Loan Party or any other Subsidiary under any Loan Document and (ii) the obligation of any Loan Party or any other Subsidiary to reimburse any amount in respect of any of the foregoing that any Lender, Agent or Arranger, in its sole discretion, may elect to pay or advance on behalf of such Loan Party or such Subsidiary.

“Organization Documents” means (a) with respect to any corporation or company, the certificate or articles of incorporation or amalgamation, the memorandum and articles of association, any other constitutional documents, any certificates of change of name and/or the bylaws; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, declaration, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Applicable Indebtedness” has the meaning specified in Section 2.05(b)(ii)(A).

“Other Taxes” means all present or future stamp, registration, court or documentary Taxes and any other excise, property, intangible, mortgage recording or similar Taxes which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document, excluding, in each case, any such



Tax resulting from an Assignment and Assumption or transfer or assignment to or designation of a new Applicable Lending Office or other office for receiving payments under any Loan Document (an “Assignment Tax”) but only if (a) such Assignment Tax is imposed as a result of a present or former connection of the assignor or assignee with the jurisdiction imposing such Assignment Tax (other than any connection arising solely from any Loan Documents or any transactions contemplated thereby) and (b) such Assignment Tax does not arise as a result of an assignment (or designation of a new Applicable Lending Office) pursuant to a request by the Borrower under Section 3.06.

“Outstanding Amount” means (a) with respect to the Initial Term Loans and Initial Revolving Credit Loans, on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Initial Term Loans and Initial Revolving Credit Loans (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing), as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving effect to any related L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

“Overnight Rate” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning specified in Section 10.07(e).

“Participant Register” has the meaning specified in Section 10.07(e).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party, any Restricted Subsidiary or any ERISA Affiliate or to which any Loan Party, any Restricted Subsidiary or any ERISA Affiliate contributes or has an obligation to contribute, or has made or been obligated to make contributions at any time during the immediately preceding six plan years.

“Perfection Certificate” has the meaning specified in Section 4.01(b).

“Perfection Certificate Supplement” means a certificate substantially in the form of Exhibit N.

“Permitted Acquisition” has the meaning specified in Section 7.02(j).

“Permitted Call Spread Transaction” means (a) any call or capped call option (or substantively equivalent derivative transaction) relating to the Common Stock (or other securities or

property following a merger event, reclassification or other change of the Common Stock) purchased by the Borrower in connection with the issuance of any Permitted Convertible Indebtedness and settled in Common Stock (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Common Stock or such other securities or property), and cash in lieu of fractional shares of Common Stock, or (b) any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Common Stock (or other securities or property following a merger event, reclassification or other change of the Common Stock) sold by the Borrower substantially concurrently with any purchase by the Borrower of a Permitted Call Spread Transaction described in clause (a) and settled in Common Stock (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Common Stock or such other securities or property), and cash in lieu of fractional shares of Common Stock; provided that the terms, conditions and covenants of each such transaction described in clause (a) or clause (b) shall be such as are customary for transactions of such type (as determined by the Borrower in good faith).

“Permitted Convertible Indebtedness” means (a) the Convertible Notes and (b) unsecured Indebtedness of the Borrower that is convertible into shares of Common Stock (or other securities or property following a merger event, reclassification or other change of the Common Stock), cash or a combination thereof (such amount of cash determined by reference to the price of the Common Stock or such other securities or property), and cash in lieu of fractional shares of Common Stock; provided that, in the case of any Permitted Convertible Indebtedness described in clause (b), (x) the final maturity date of such Permitted Convertible Indebtedness is not prior to the date that is ninety-one (91) days after the Latest Maturity Date and (y) the terms, conditions and covenants of such Permitted Convertible Indebtedness shall be such as are customary for transactions of such type (as determined by the Borrower in good faith).

“Permitted Forward Agreement” means any contract (including, but not limited to, any accelerated share repurchase agreement, prepaid forward agreement, forward agreement or other share repurchase agreement in the form of an equity option or forward) pursuant to which, among other things, the counterparty is required to deliver to the Borrower shares of Common Stock, cash in lieu of delivering shares of Common Stock or cash representing the termination value of such forward or option or a combination thereof from time to time upon settlement, exercise or early termination of such forward or option; provided that the prepayment amount to be paid by the Borrower to the counterparty in connection with such Permitted Forward Agreement will not exceed the net cash proceeds received by the Borrower from the sale of the Permitted Convertible Indebtedness issued in connection with such Permitted Forward Agreement (including, without limitation, the exercise of any over-allotment or initial purchaser’s or underwriter’s option); provided, further, that the terms, conditions and covenants of such contract are customary for contracts of such type (as determined by the Borrower in good faith).

“Permitted Holder” means each of Vladimir Shmunis and Vlad Vendrow and their respective estates, spouses, siblings, ancestors, heirs and lineal descendants, and any spouses of such Persons, the legal representatives of any of the foregoing, and any bona fide trust of which one or more of the foregoing are the principal beneficiaries or grantors, or any fund, investment vehicle or other Person that is controlled by any of the foregoing, including as disclosed in the Borrower’s proxy statement filed with the SEC from time to time.

“Permitted Liens” means any Liens permitted by Section 7.01.

“Permitted Non-Recourse Receivables Financing” means one or more non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such non-recourse facilities) receivables purchase, factoring or other similar facilities made available to the Borrower or any of its Restricted Subsidiaries on then-market terms (as reasonably determined by the Borrower) in an aggregate principal amount for all such facilities, when taken with the aggregate principal amount of facilities under the definition of “Permitted Recourse Receivables Financing”, not exceeding, at the time of incurrence of each such facility, the greater of (x) \$75,000,000 and (y) 20% of LTM Consolidated EBITDA at any time outstanding.

“Permitted Receivables Financing” means a Permitted Non-Recourse Receivables Financing or a Permitted Recourse Receivables Financing.

“Permitted Recourse Receivables Financing” means one or more receivables purchase, factoring or other similar facilities made available to the Borrower or any of its Restricted Subsidiaries on then-market terms (as reasonably determined by the Borrower) in an aggregate principal amount for all such facilities, when taken with the aggregate principal amount of facilities under the definition of “Permitted Non-Recourse Receivables Financing”, not exceeding, at the time of incurrence of each such facility, the greater of (x) \$75,000,000 and (y) 20% of LTM Consolidated EBITDA at any time outstanding.

“Permitted Refinancing” means, with respect to any Indebtedness, (A) any modification (other than a release of the obligor of such Indebtedness), refinancing, replacement, refunding, renewal or extension of such Indebtedness, or (B) the issuance of Indebtedness in exchange for, or the proceeds of which are used to, refinance, refund, renew or extend, in either case, such Indebtedness (clauses (A) and (B) collectively, to “Refinance”); provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced except by an amount equal to the sum of (i) an amount equal to unpaid accrued interest and premium thereon, plus amounts that would otherwise be permitted under Section 7.03 (with such amounts being deemed utilization of the applicable basket or exception under Section 7.03), (ii) other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such Refinancing and (iii) an amount equal to any existing commitments unutilized thereunder, and as otherwise permitted under Section 7.03, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(f), such Permitted Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of, the Indebtedness being Refinanced (provided that the foregoing requirements of this clause (b) shall not apply to any Qualifying Bridge Facility, to customary mandatory prepayments upon asset sales, casualty events, excess cash flow, change of control or other similar event risk provisions in loan facilities or to customary change of control, fundamental change, make-whole fundamental change or other similar event risk provisions and, for the avoidance of doubt, provisions providing for settlement upon conversion of Permitted Convertible Indebtedness)), (c) to the extent such Indebtedness being so Refinanced is secured by a Lien on the Collateral, (i) the Lien securing such Permitted Refinancing Indebtedness shall not be senior in priority to the Lien on the Collateral securing the Indebtedness being Refinanced unless otherwise permitted under any basket or exception under Section 7.01 (with such amounts constituting utilization of the applicable basket or

exception under Section 7.01) and (ii) such Permitted Refinancing Indebtedness shall not be secured by any assets of the Borrower or its Restricted Subsidiaries that do not secure the Indebtedness being Refinanced, (d) to the extent such Indebtedness being so Refinanced is unsecured, such Permitted Refinancing Indebtedness shall also be unsecured unless secured by Liens that are otherwise permitted under any basket or exception under Section 7.01 (with such amounts constituting utilization of the applicable basket or exception under Section 7.01) and (e) if such Indebtedness being Refinanced is Indebtedness permitted pursuant to Section 7.03(c), (i) to the extent such Indebtedness being so Refinanced is subordinated in right of payment to the Obligations, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being so Refinanced unless otherwise permitted by any basket or exception under Section 7.03 (with such amounts constituting utilization of the applicable basket or exception under Section 7.03), (ii) the terms and conditions (including, if applicable, as to collateral but excluding as to subordination, interest rate, fees, redemption premium, conversion rates or other provisions related to any equity provisions of such Indebtedness) of any such Permitted Refinancing Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Secured Parties than the terms and conditions of the Indebtedness being Refinanced (other than in the case of terms (x) not materially less favorable to the Loan Parties than those terms and conditions hereof or (y) applying to periods after the then Latest Maturity Date or otherwise added for the benefit of the Lenders hereunder); provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Permitted Refinancing Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Permitted Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees) and (iii) such Permitted Refinancing Indebtedness is incurred by the Person who is the obligor of the Indebtedness being so Refinanced, and no additional obligors become liable for such Permitted Refinancing Indebtedness except to the extent permitted by any basket or exception under Section 7.03 (with such amounts constituting utilization of the applicable basket or exception under Section 7.03) or as required by the terms of the Indebtedness consistent with the terms of the Indebtedness so Refinanced.

“Permitted Refinancing Indebtedness” means, with respect to any Indebtedness, the Indebtedness resulting from any Permitted Refinancing of such Indebtedness.

“Permitted Sale Leaseback” means any Sale Leaseback consummated by the Borrower or any of its Restricted Subsidiaries after the Closing Date; provided that any such Sale Leaseback that is not between (a) a Loan Party and another Loan Party or (b) a Restricted Subsidiary that is not a Loan Party and another Restricted Subsidiary that is not a Loan Party must be, in each case, consummated for fair value as determined at the time of consummation in good faith by the Borrower or such Restricted Subsidiary (which such determination may take into account any retained interest or other Investment of the Borrower or such Restricted Subsidiary in connection with, and any other material economic terms of, such Sale Leaseback).

“Permitted Tax Restructuring” means any reorganizations and other activities related to tax planning and tax reorganization (as determined by the Borrower in good faith) entered into on or after the Closing Date so long as such Permitted Tax Restructuring does not materially impair the security interests of the Lenders in the Collateral and is otherwise not materially adverse to the Lenders and after giving effect to such Permitted Tax Restructuring, the Borrower and its Restricted Subsidiaries otherwise comply with Section 6.10.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established or maintained by any Loan Party or any Restricted Subsidiary or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Platform” has the meaning specified in Section 6.02.

“Post-Acquisition Period” means, with respect to any Permitted Acquisition or the conversion of any Unrestricted Subsidiary into a Restricted Subsidiary, the period beginning on the date such Permitted Acquisition or conversion is consummated and ending on the last day of the twelve (12) months immediately following the date on which such Permitted Acquisition or conversion is consummated.

“Pro Forma Adjustment” means, for any Test Period that includes all or any part of a fiscal quarter included in any Post-Acquisition Period, with respect to the Acquired EBITDA of the applicable Acquired Entity or Business or Converted Restricted Subsidiary or the Consolidated EBITDA of the Borrower, (a) the pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, that is factually supportable and is expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act, as interpreted by the Securities and Exchange Commission and (b) additional good faith pro forma adjustments arising out of cost savings initiatives, cost synergies, operating improvements and operating expense reductions (including costs to achieve such cost savings, cost synergies, operating expense reductions and operating expense reductions) attributable to such transaction and additional costs associated with the combination of the operations of such Acquired Entity or Business or Converted Restricted Subsidiary with the operations of the Borrower and its Restricted Subsidiaries, in each case being given pro forma effect, that (i) have been realized or are expected to be realized (in the reasonable and good faith determination of the Borrower) and (ii) subject to the limitations set forth in clause (a)(xi) of the definition of “Consolidated EBITDA,” will be implemented or are expected to be implemented (in the reasonable and good faith determination of the Borrower) following such transaction and are supportable and quantifiable and expected to be implemented, committed to be implemented or result from actions taken or expected to be taken within the succeeding twelve (12) months and, in each case, including, but not limited to, (w) reduction in personnel expenses and reduction of costs related to administrative functions, (x) reductions of costs related to leased or owned properties and (y) reductions from the consolidation of operations and streamlining of corporate overhead taking into account, for purposes of determining such compliance, the historical financial statements of the Acquired Entity or Business or Converted Restricted Subsidiary and the consolidated financial statements of the Borrower and its Subsidiaries, assuming such Permitted Acquisition, other Investment or conversion, and all other

Permitted Acquisitions, other Investments or conversions that have been consummated during the period, and any Indebtedness or other liabilities repaid in connection therewith had been consummated and incurred or repaid at the beginning of such period (and assuming that such Indebtedness to be incurred bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the interest rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination); provided that, so long as such actions are initiated during such Post-Acquisition Period or such costs are incurred during such Post-Acquisition Period, as applicable, for purposes of projecting such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, it may be assumed that such cost savings will be realizable during the entirety of such Test Period, or such additional costs, as applicable, will be incurred during the entirety of such Test Period.

“Pro Forma Basis” and “Pro Forma Effect” mean, with respect to any determination of a financial metric or financial ratio, that (a) to the extent applicable, the Pro Forma Adjustment shall have been made and (b) all Specified Transactions and transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement (or as of the last date in the case of a balance sheet item) and that: (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (A) in the case of a Disposition described in the definition of “Specified Transaction”, or any designation of a Restricted Subsidiary as an Unrestricted Subsidiary, shall be excluded as of the first day of the applicable period of measurement, and (B) in the case of a Permitted Acquisition or other Investment described in the definition of “Specified Transaction” or any designation of an Unrestricted Subsidiary as a Restricted Subsidiary, shall be included as of the first day of the applicable period of measurement, (ii) any repayment, prepayment, discharge, conversion or cancellation of Indebtedness shall be deemed to have occurred as of the first day of the applicable measurement period and (iii) any incurrence or assumption of Indebtedness by the Borrower or any Restricted Subsidiary in connection therewith shall be deemed to have occurred as of the first day of the applicable measurement period, and if such Indebtedness has a floating or formula rate, the interest on such Indebtedness shall be calculated as if the rate in effect with respect to such Indebtedness as at the relevant date of determination had been the applicable rate for the entire measurement period; provided that, without limiting the application of the Pro Forma Adjustment pursuant to clause (a) above, the foregoing pro forma adjustments may be applied to any such financial metric or financial ratio solely to the extent that such adjustments are consistent with the definition of “Consolidated EBITDA” and give effect to events (including operating expense reductions) that are (as determined by the Borrower in good faith) (1)(x) directly attributable to such transaction, (y) expected to have a continuing impact on the Borrower and its Restricted Subsidiaries and (z) factually supportable or (2) otherwise consistent with the definition of “Pro Forma Adjustment.”

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

“Public Lender” has the meaning specified in Section 6.02.

“QFC” has the meaning specified in Section 10.27(b).

“QFC Credit Support” has the meaning specified in Section 10.27.

“Qualified Equity Interests” means any Equity Interests of the Borrower that are not Disqualified Equity Interests.

“Qualifying Bridge Facility” means customary bridge loans, so long as any loans, notes, securities or other Indebtedness for which such bridge loans are exchanged, replaced or converted satisfy (or will satisfy at the time of such exchange, replacement or conversion) any otherwise applicable requirements specified herein.

“Receivables Financing Assets” means accounts receivables, royalty and other revenue streams, other rights to payment and any assets related thereto, including all collateral securing any of the foregoing, all contracts and all guarantees or other obligations in respect of any of the foregoing, proceeds of any of the foregoing and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with receivables purchase, factoring or other similar facilities, and any Swap Contracts entered into by the Borrower or any Subsidiary in connection with such assets subject to a Permitted Receivables Financing.

“Refinance” shall have the meaning assigned to such term in the definition of the term “Permitted Refinancing,” and “Refinanced” and “Refinancing” shall have meanings correlative thereto.

“Refinancing Revolving Commitments” means Incremental Revolving Credit Commitments that are designated by a Responsible Officer of the Borrower as “Refinancing Revolving Commitments” in a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent on or prior to the date of incurrence; provided that (a) any Refinancing Revolving Commitments shall not be in a principal amount that exceeds the amount of Revolving Credit Commitments so refinanced, except to the extent a different incurrence basket pursuant to Section 7.03 is utilized plus an amount equal to any fees, expenses, commissions, underwriting discounts and premiums payable in connection with such Refinancing Revolving Commitments, (b) to the extent applicable, an Acceptable Intercreditor Agreement is entered into, (c) any Refinancing Revolving Commitment does not mature prior to the maturity date of or have scheduled amortization or commitment reductions prior to the Maturity Date of the Revolving Credit Commitments being refinanced, (d) such Refinancing Revolving Commitments have the same guarantors as the Revolving Credit Commitments being refinanced unless such other guarantors substantially concurrently guarantee the Obligations, (e) such Refinancing Revolving Commitments are secured by the same assets as the Revolving Credit Commitments being refinanced unless such other assets substantially concurrently secure the Obligations, (f) the terms and conditions of such Refinancing Revolving Commitments (excluding pricing, fees and optional prepayment or redemption terms or covenants or other provisions applicable only to periods after the Maturity Date of the Revolving Credit Commitments being refinanced) shall reflect market terms and conditions at the time of incurrence or issuance (as reasonably determined by the Borrower in good faith) and (g) if the terms for such Refinancing Revolving Commitments include any financial maintenance covenants, such covenants shall be added for the benefit of all Revolving Credit Lenders.

“Refinancing Term Loans” means Incremental Term Loans and/or Incremental Equivalent Debt that are designated by a Responsible Officer of the Borrower as “Refinancing Term Loans” in a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent on or prior to the date of incurrence, provided that (a) any Refinancing Term Loans shall not be in a principal amount that exceeds the amount of Term Loans so refinanced, except to the extent a different incurrence

basket pursuant to Section 7.03 is utilized plus an amount equal to any fees, expenses, commissions, underwriting discounts and premiums payable in connection with such Refinancing Term Loans, (b) to the extent applicable, an Acceptable Intercreditor Agreements is entered into, (c) other than with respect to any Qualifying Bridge Facility, any Refinancing Term Loans do not mature prior to the Maturity Date of or have a shorter Weighted Average Life to Maturity that is shorter than the remaining Weighted Average Life to Maturity of the Terms Loans being refinanced, (d) such Refinancing Term Loans have the same guarantors as the Term Loans being refinanced unless such other guarantors substantially concurrently guarantee the Obligations, (e) such Refinancing Term Loans are secured by the same assets as the Term Loans being refinanced unless such other assets substantially concurrently secure the Obligations, (f) the terms and conditions of such Refinancing Term Loans (excluding pricing and optional prepayment or redemption terms or covenants or other provisions applicable only to periods after the Maturity Date of the Term Loans being refinanced) shall reflect market terms and conditions at the time of incurrence or issuance (as reasonably determined by the Borrower in good faith) and (g) if such Refinancing Term Loans contain any financial maintenance covenants, such covenants shall be added for the benefit of all Term Lenders.

“Register” has the meaning specified in Section 10.07(d).

“Rejection Notice” has the meaning specified in Section 2.05(b)(v).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person’s Affiliates.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection, migration or leaching on, into or through the Environment or into, from or through any building, structure or facility.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Committed Loan Notice, and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“Required Initial Term Lenders” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings with respect to the Initial Term Loans and (b) aggregate unused Initial Term Commitments; provided that the unused Initial Term Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Initial Term Lenders.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate outstanding amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition), (b) aggregate unused Term Commitments and (c) aggregate unused Revolving Credit Commitments; provided that the unused Term Commitment and unused Revolving



Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Revolving Credit Lenders” means, as of any date of determination, Revolving Credit Lenders having more than 50% of the sum of the (a) Total Outstandings with respect to the Revolving Credit Loans and L/C Obligations (with the aggregate outstanding amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for the purposes of making a determination of Required Revolving Credit Lenders.

“Rescindable Amount” has the meaning specified in Section 9.16.

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

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, or other similar officer or director of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Casualty Event” has the meaning specified in Section 2.05(b)(vii).

“Restricted Disposition” has the meaning specified in Section 2.05(b)(vii).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest in the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the holders of Equity Interests of the Borrower. For the avoidance of doubt, none of (a) any payments of cash or deliveries in shares of Equity Interests (or other securities or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) pursuant to the terms of, or otherwise in performance of its obligations under, any Permitted Convertible Indebtedness (including, without limitation, making payments of interest and principal thereon, making payments due upon required repurchase thereof and/or making payments and deliveries upon conversion or settlement thereof), (b) any payments of cash or deliveries of Equity Interests (or other securities or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) in connection with any Permitted Call Spread Transaction (including in connection with

the exercise and/or early unwind or settlement thereof), or (c) any payments of cash or deliveries of Equity Interests in connection with any Permitted Forward Agreement (including in connection with the early termination, unwind or settlement thereof) shall constitute a Restricted Payment.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Retained Declined Proceeds” has the meaning specified in Section 2.05(b)(v).

“Revolving Credit Borrowing” means a borrowing consisting of Revolving Credit Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Term SOFR Loans, having the same Interest Period, made by each of the Revolving Credit Lenders of the applicable Class.

“Revolving Credit Commitment” means, as to any Lender, such Lender’s Initial Revolving Credit Commitment, Extended Revolving Credit Commitment or Incremental Revolving Credit Commitment, as applicable.

“Revolving Credit Commitment Increase” has the meaning specified in Section 2.14(a).

“Revolving Credit Exposure” means, as to each Revolving Credit Lender at any time, the sum of (a) the outstanding principal amount of all Revolving Credit Loans held by such Revolving Credit Lender (or its Applicable Lending Office) and (b) such Revolving Credit Lender’s Revolving Credit Percentage of the L/C Obligations.

“Revolving Credit Facility” means (a) the Initial Revolving Credit Facility and (b) any other Class of Revolving Credit Commitments and the Revolving Credit Loans made thereunder.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment or that holds Revolving Credit Loans at such time.

“Revolving Credit Loans” means the Initial Revolving Credit Loans, loans made pursuant to Extended Revolving Credit Commitments and loans made pursuant to Incremental Revolving Credit Commitments.

“Revolving Credit Note” means a promissory note of the Borrower payable to any Revolving Credit Lender or its registered assigns, in substantially the form of Exhibit C-2 hereto, evidencing the aggregate Indebtedness of the Borrower to such Revolving Credit Lender resulting from any Class of Revolving Credit Loans made by such Revolving Credit Lender.

“Revolving Credit Percentage” means, at any time with respect to any Revolving Credit Lender, the percentage equal to a fraction the numerator of which is the amount of such Revolving Credit Lender’s aggregate Revolving Credit Commitments at such time and the denominator of which is the aggregate amount of all Revolving Credit Commitments, provided that if the Revolving Credit Commitments of any Class have terminated or expired, the Revolving Credit Percentage shall be recalculated without giving effect to the Revolving Credit Commitments of such Class.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any of its Restricted Subsidiaries (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

“Same Day Funds” means immediately available funds.

“Sanctions Laws and Regulations” means any sanctions or related requirements imposed by the USA PATRIOT Act, the Executive Order No. 13224 of September 23, 2001, entitled Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), the U.S. International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*), the U.S. Trading with the Enemy Act (50 U.S.C. App. §§ 1 *et seq.*), the U.S. Syria Accountability and Lebanese Sovereignty Act, the U.S. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 or the Iran Sanctions Act, Section 1245 of the National Defense Authorization Act of 2012, all as amended, or any of the foreign assets control regulations (including but not limited to 31 C.F.R., Subtitle B, Chapter V, as amended) or any other law or executive order relating thereto administered by the U.S. Department of the Treasury Office of Foreign Assets Control, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, His Majesty’s Treasury of the United Kingdom or any other relevant sanctions authority, in each case in effect or enacted on or after the date of this Agreement.

“Scheduled Unavailability Date” has the meaning specified in Section 3.02(c)(ii).

“SEC” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Secured Hedge Agreement” means any Swap Contract that is entered into by and between any Loan Party or any Restricted Subsidiary and any Hedge Bank; provided that Secured Hedge Agreements shall not include any Permitted Call Spread Transaction.

“Secured Net Leverage Ratio” means, as of any date of determination, the ratio of (a) (i) Consolidated Total Debt that is secured by a Lien on any Collateral as of the last day of the most recent Test Period minus (ii) Unrestricted Cash as of such date to (b) LTM Consolidated EBITDA.

“Secured Parties” means, collectively, the Administrative Agent, the Collateral Agent, any Supplemental Administrative Agent, the Lenders, the L/C Issuers, the Hedge Banks, the Cash Management Banks and any co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.02.

“Securities Act” means the Securities Act of 1933.

“Security Agreement” means that certain Security Agreement, dated as of the Closing Date, among the Borrower, the Subsidiaries party thereto and the Collateral Agent, as supplemented by any Security Agreement Supplement executed and delivered pursuant to Section 6.10.

“Security Agreement Supplement” has the meaning specified in the Security Agreement.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” means 0.10%.

“Sold Entity or Business” has the meaning specified in the definition of the term “Consolidated EBITDA.”

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person (on a going concern basis) is greater than the total amount of debts and liabilities, contingent, subordinated or otherwise, of such Person, (b) the present fair salable value of the assets of such Person (on a going concern basis) is not less than the amount that will be required to pay the liability of such Person on its debts as they become absolute and matured, (c) such Person will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as they become absolute and matured and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital; provided that the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“SPC” has the meaning specified in Section 10.07(h).

“Specified Communications” has the meaning specified in Section 10.02(g).

“Specified Event of Default” means an Event of Default pursuant to Sections 8.01(a), 8.01(f) or 8.01(g) (in the case of Section 8.01(f) or 8.01(g), with respect to the Borrower).

“Specified Transaction” means (a) any Permitted Acquisition or other Investment, (b) any Disposition, (c) any incurrence, repayment or redemption of Indebtedness, (d) any Restricted Payment, (e) any designation of a Subsidiary as an Unrestricted Subsidiary or as a Restricted Subsidiary, (f) any incurrence of Incremental Term Loans, Incremental Revolving Credit Commitments, Extended Term Loans or Extended Revolving Credit Commitments and (g) any other event or occurrence that by the terms of this Agreement requires compliance with a test or covenant to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect”; provided that at the Borrower’s sole election, any such Specified Transaction (other than a Restricted Payment) having an aggregate value of less than \$25,000,000 shall not be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect”.

“Spot Rate” means, in relation to the conversion of one currency into another currency, the rate quoted by the Administrative Agent acting in such capacity as the spot rate for the purchase by the Administrative Agent of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the

foreign exchange computation is made; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Administrative Agent acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

“Springing Maturity Threshold Amount” means, on any date of determination, an amount equal to 50% of LTM Consolidated EBITDA.

“Subordinated Debt” means Indebtedness incurred by a Loan Party that is subordinated in writing in right of payment to the prior payment of all Obligations of such Loan Party under the Loan Documents.

“Subordinated Debt Documents” means any agreement, indenture or instrument pursuant to which any Subordinated Debt is issued, in each case as amended to the extent permitted under the Loan Documents.

“Subsidiary” of a Person means a corporation, company, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor” means, collectively, the Subsidiaries of the Borrower that are Guarantors.

“Successor Borrower” has the meaning specified in Section 7.04(d).

“Successor Rate” has the meaning specified in Section 3.02(c).

“Supplemental Administrative Agent” has the meaning specified in Section 9.13(a) and “Supplemental Administrative Agents” shall have the corresponding meaning.

“Supported OFC” has the meaning specified in Section 10.27.

“Surviving Indebtedness” means Indebtedness of the Borrower or any of its Subsidiaries outstanding immediately after giving effect to this Agreement (other than the Obligations).

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement,

and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement; provided that any instrument described in clause (a) or (b) in respect of any Equity Interest issued by the Borrower or any of its Affiliates, including, for the avoidance of doubt, any phantom stock or similar plan (including any stock option plan) providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or its Subsidiaries, and any Permitted Call Spread Transaction or Permitted Forward Transaction, shall not constitute a Swap Contract.

“Swap Obligation” means any obligation of any Guarantor to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a) above, the amount(s) determined as the mark to market value(s) for such Swap Contracts, as determined by the Hedge Bank (or the Borrower, if no Hedge Bank is party to such Swap Contract) in accordance with the terms thereof and in accordance with customary methods for calculating mark-to-market values under similar arrangements by the Hedge Bank (or the Borrower, if no Hedge Bank is party to such Swap Contract).

“Taxes” means all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings (including backup withholding) or similar charges imposed by any Governmental Authorities, and all liabilities (including additions to tax, penalties and interest) with respect thereto.

“Term A Loans” means the Initial Term Loans and any Incremental Term A Loans.

“Term Borrowing” means a borrowing consisting of Term Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Term SOFR Loans, having the same Interest Period, made by each of the Term Lenders of the applicable Class.

“Term Commitment” means, as to any Lender, such Lender’s Initial Term Commitment, commitment in respect of Extended Term Loans or commitment in respect of Incremental Term Loans, as applicable.

“Termination Date” means the first date on which (a) the Aggregate Commitments are terminated, (b) all Obligations (other than (x) Obligations in respect of any Secured Hedge Agreements not yet due and payable, (y) Cash Management Obligations not yet due and payable and (z) contingent indemnification obligations and other contingent obligations not yet accrued and payable) are paid in full and (c) all Letters of Credit (other than Letters of Credit that have been Cash Collateralized or back-stopped to the reasonable satisfaction of the applicable L/C Issuer) have expired or been terminated.

“Term Lender” means, at any time, any Lender that has a Term Loan or a Term Commitment at such time.

“Term Loans” means the Initial Term Loans, any Extended Term Loans and any Incremental Term Loans.

“Term Note” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit C-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from any Class of Term Loans made by such Lender.

“Term SOFR” means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day;

provided that if the Term SOFR determined in accordance with either of the foregoing clauses (a) or (b) of this definition would otherwise be less than zero, then Term SOFR shall be deemed to be equal to zero.

“Term SOFR Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Term SOFR”.

“Term SOFR Replacement Date” has the meaning specified in Section 3.02(c).

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Test Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower for which financial statements have been or are required to be delivered pursuant to Section 6.01(a) or 6.01(b).

“Threshold Amount” means \$75,000,000.

“Ticking Fee” has the meaning specified in Section 2.09(b).

“TNLR Financial Covenant” means the financial covenant set forth in Section 7.11.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio of (a) (i) Consolidated Total Debt as of the last day of the most recent Test Period minus (ii) Unrestricted Cash as of such date to (b) LTM Consolidated EBITDA.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Transactions” means, collectively, (a) the execution, delivery and performance by the Borrower and the other Loan Parties of this Agreement and the other Loan Documents to which each is a party and (b) the payment of the fees and expenses in connection therewith.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Term SOFR Loan.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

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

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

“Undisclosed Administration” means in relation to a Lender or its parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“United States” and “U.S.” mean the United States of America.

“United States Tax Compliance Certificate” has the meaning specified in Section 3.01(f)(ii)(C).

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).



“Unrestricted Cash” means, as of any date of determination, unrestricted cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries up to an amount equal to the greater of (x) \$187,500,000 and (y) 50% of LTM Consolidated EBITDA.

“Unrestricted Incremental Amount” means an amount not to exceed the greater of (x) \$375,000,000 and (y) 100% of LTM Consolidated EBITDA.

“Unrestricted Subsidiary” means (i) each Subsidiary of the Borrower listed on Schedule 1.01B to the Disclosure Letter, (ii) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 6.13 subsequent to the Closing Date and (iii) any Subsidiary of an Unrestricted Subsidiary.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“U.S. Special Resolution Regimes” has the meaning specified in Section 10.27.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“Voluntary Prepayment Amount” has the meaning specified in Section 2.14(a).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness; provided, for the avoidance of doubt, that clause (a)(i) shall not include any payment (whether in cash, securities or other property) on account of the redemption, repurchase, conversion or settlement with respect to any Permitted Convertible Indebtedness (including, without limitation, as a result of a change of control, asset sale or other fundamental change or any early conversion in accordance with the terms of such Permitted Convertible Indebtedness).

“Wholly Owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) directors’ qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“Withdrawal Liability” means the liability of a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

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

Section 1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears, unless otherwise specified.

(iii) The term “including” is by way of example and not limitation.

(iv) The word “will” shall be construed to have the same meaning and effect as the word “shall”.

(v) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(vi) The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(d) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(e) All references to “in the ordinary course of business” of the Borrower or any Subsidiary thereof means (i) in the ordinary course of business of, or in furtherance of an objective that is

in the ordinary course of business of the Borrower or such Subsidiary, as applicable, (ii) customary and usual in the industry or industries of the Borrower and its Subsidiaries in the United States or any other jurisdiction in which the Borrower or any Subsidiary does business, as applicable, or (iii) generally consistent with the past or current practice of the Borrower or such Subsidiary, as applicable, or any similarly situated businesses in the United States or any other jurisdiction in which the Borrower or any Subsidiary does business, as applicable.

Section 1.03. Accounting Terms.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, applied in a manner consistent with that used in preparing the Borrower's prior audited financial statements, except as otherwise specifically prescribed herein.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test contained in this Agreement with respect to any period during which any Specified Transaction occurs, the Total Net Leverage Ratio, the Secured Net Leverage Ratio and the Interest Coverage Ratio shall be calculated with respect to such period and such Specified Transaction on a Pro Forma Basis.

(c) Where reference is made to "the Borrower and its Restricted Subsidiaries on a consolidated basis" or similar language, such consolidation shall not include any Subsidiaries of the Borrower other than Restricted Subsidiaries.

Section 1.04. Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05. References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by the Loan Documents; (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law; and (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns.

Section 1.06. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07. Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day (other than as explicitly provided herein).

Section 1.08. Currency Equivalents Generally.

For purposes of any determination under Article VI, Article VII (other than Section 7.11) or Article VIII, all amounts incurred, outstanding or proposed to be incurred or outstanding in currencies other than Dollars shall be translated into Dollars at the Spot Rate (rounded to the nearest currency unit, with 0.5 or more of a currency unit being rounded upward). No Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Lien, Investment or Indebtedness is incurred, Disposition or Restricted Payment is made, Subordinated Debt is prepaid or other transaction is consummated; provided, further, that, for the avoidance of doubt, the foregoing provisions of this Section 1.08 shall otherwise apply to such Sections, including with respect to determining whether any Lien, Investment or Indebtedness may be incurred, Disposition or Restricted Payment may be made or Subordinated Debt may be prepaid at any time under such Sections. For purposes of Section 7.11, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing the most recently delivered financial statements pursuant to Section 6.01(a) or 6.01(b). For purposes of any determination of Consolidated Total Debt, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing the most recently delivered financial statements pursuant to Section 6.01(a) or 6.01(b).

Section 1.09. Certain Calculations and Tests.

(a) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when determining compliance with any financial ratio, basket or any other provision of this Agreement (including the determination of compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom or accuracy of representations and warranties) in connection with the consummation of a Limited Condition Transaction, the date of determination of such financial ratio, basket or other provision (including determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom or accuracy of representations and warranties) shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), be deemed to be in the case of a LCT Election, (i) in the case of any transaction described in clause (a) of the definition of "Limited Condition Transaction," the date the definitive agreement for such Limited Condition Transaction is entered into or, solely in connection with an acquisition to which the United Kingdom City Code on Takeovers and Mergers (the "City Code") applies, the date on which a "Rule 2.7 announcement" of a firm intention to make an offer in respect of a target company is made in compliance with the City Code, (ii) in the case of any transaction described in clause (b) of the definition of "Limited Condition Transaction," the date of such irrevocable notice or irrevocable offer and (iii) in the case of any transaction described in clause (c) of the definition of "Limited Condition Transaction," the date of such declaration (any such date, the "LCT Test Date"), and if, after such financial ratios, baskets and other provisions are measured on a Pro Forma Basis after giving effect to such Limited Condition Transaction and the other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof, and including, at the Borrower's election, the application of the Covenant Toggle in the case of a transaction described in clause (a) of the definition of "Limited Condition Transaction" constituting a Material Acquisition) as if they occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such financial ratios, baskets and other provisions, such financial ratios, baskets and other provisions shall be deemed to

have been complied with; provided that in the case of any transaction with respect to which this Agreement requires that no Default or Event of Default has occurred, is continuing or would result therefrom, the consummation of such transaction as a Limited Condition Transaction shall be subject to the condition that as of the date of the consummation of such Limited Condition Transaction and after giving effect thereto, no Specified Event of Default has occurred, is continuing or would result therefrom. For the avoidance of doubt, (x) if any of such financial ratios or baskets are exceeded as a result of fluctuations in such financial ratio or basket (including due to fluctuations in Consolidated EBITDA) at or prior to the consummation of the relevant Limited Condition Transaction, such financial ratios and baskets will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (y) such financial ratios, baskets and other provisions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions. If the Borrower has made an LCT Election for any Limited Condition Transaction then in connection with any subsequent calculation of any financial ratio or basket with respect to any other Specified Transaction on or following the relevant LCT Test Date and prior to the earlier of (x) the date on which such Limited Condition Transaction is consummated and (y) the date on which the definitive agreement, binding offer, irrevocable notice or declaration for such Limited Condition Transaction is terminated or expires, any such financial ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Transaction and other Specified Transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof, and including, at the Borrower's election, the application of the Covenant Toggle in the case of a transaction described in clause (a) of the definition of "Limited Condition Transaction" constituting a Material Acquisition) have been consummated.

(b) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, pro forma compliance with any Total Net Leverage Ratio test, Secured Net Leverage Ratio test and/or Interest Coverage Ratio test) (any such amounts, the "Fixed Amounts") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with any such financial ratio or test (any such amounts, the "Incurrence Based Amounts"), it is understood and agreed that (i) the Fixed Amounts (and any cash proceeds thereof) and (ii) any Indebtedness resulting from borrowings under any Revolving Credit Facility which occur concurrently or substantially concurrently with the incurrence of the Incurrence Based Amounts shall in each case be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence.

(c) Notwithstanding anything to the contrary herein, for purposes of the covenants described in Article VII, if any Lien, Investment, Indebtedness, Disposition, Restricted Payment or prepayment of Subordinated Debt (or a portion thereof) would be permitted pursuant to one or more provisions described therein, the Borrower may divide and classify such Lien, Investment, Indebtedness, Disposition, Restricted Payment or prepayment of Subordinated Debt (or a portion thereof) in any manner that complies with the covenants set forth in Article VII, and may later divide and reclassify any such Lien, Investment, Indebtedness, Disposition, Restricted Payment or prepayment of Subordinated Debt (or a portion thereof) so long as the Lien, Investment, Indebtedness, Disposition, Restricted Payment or prepayment of Subordinated Debt (or a portion thereof) (as so redivided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such redivision or

reclassification; provided that any such divisions, classifications, redivisions and/or reclassifications shall only be permitted within a specific type of covenant, and not, for the avoidance of doubt, across different types of covenants.

Section 1.10. [Reserved].

Section 1.11. [Reserved].

Section 1.12. Divisions. For all purposes under the Loan Documents, in connection with any division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.13. [Reserved].

Section 1.14. Interest Rates. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Term SOFR", or with respect to any rate that is an alternative or replacement for or successor to any of such rates (including, without limitation, any Successor Rate) or the effect of any of the foregoing, or of any Conforming Changes.

## ARTICLE II The Commitments and Credit Extensions

Section 2.01. The Loans. Subject to the terms and conditions set forth herein:

(a) Initial Term Loan Borrowings. During the Initial Term Loan Availability Period, each Initial Term Lender severally agrees to make to the Borrower a single loan or up to an aggregate of four (4) separate loans in Dollars in an aggregate principal amount not exceeding such Initial Term Lender's Initial Term Commitment on the Closing Date. The Initial Term Loans may be Base Rate Loans or Term SOFR Loans, as further provided herein. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed.

(b) Initial Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Initial Revolving Credit Lender severally agrees to make (or cause its Applicable Lending Office to make) loans denominated in Dollars (each such loan, an "Initial Revolving Credit Loan") to the Borrower from time to time, on any Business Day after the Closing Date until the Initial Revolving Credit Maturity Date in an aggregate principal amount not to exceed at any time outstanding the amount of such Initial Revolving Credit Lender's Initial Revolving Credit Commitment; provided that after giving effect to any such Revolving Credit Borrowing, the aggregate Outstanding Amount of the Initial Revolving Credit Loans of any Initial Revolving Credit Lender, plus such Initial Revolving Credit Lender's Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations that is attributable to its Initial Revolving Credit Commitment, shall not exceed such Initial Revolving Credit Lender's Initial

Revolving Credit Commitment. Within the limits of each Initial Revolving Credit Lender's Initial Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Initial Revolving Credit Loans may be Base Rate Loans or Term SOFR Loans.

Section 2.02. Borrowings, Conversions and Continuations of Loans.

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Loans from one Type to the other and each continuation of Term SOFR Loans shall be made upon the Borrower's irrevocable notice, to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent substantially in the form attached hereto as Exhibit A or any other form that may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent, (i) in the case of a Term SOFR Loan, not later than 1:00 p.m., three (3) Business Days before the date of the proposed Borrowing (or, in the case of any Term SOFR Loan to be made on the Closing Date, not later than 1:00 p.m., two (2) Business Days before the date of the proposed Borrowing) and (ii) in the case of a Base Rate Loan, not later than 11:00 a.m. on the Business Day of the proposed Borrowing. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by hand delivery, teletype or electronic transmission to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Term SOFR Loans shall be in a minimum principal amount of (x) in the case of any initial Borrowing of Initial Term Loans, \$50,000,000 and (y) otherwise, \$1,000,000 (and in each case, any amount in excess thereof shall be an integral multiple of \$100,000). Each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of (x) in the case of any initial Borrowing of Initial Term Loans, \$50,000,000 and (y) otherwise, \$500,000 (and in each case, any amount in excess thereof shall be an integral multiple of \$100,000). Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other or a continuation of Term SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the Class and principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) the location and number of the Borrower's accounts to which funds are to be disbursed, which shall comply with the requirements of Section 2.02(b). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as, or converted to Term SOFR Loans with an Interest Period of one (1) month. Any such automatic conversion or continuation shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. For the avoidance of doubt, the Borrower and Lenders acknowledge and agree that any conversion or continuation of an existing Loan shall be deemed to be a continuation of that Loan with a converted interest rate methodology and not a new Loan.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the

Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make (or cause its Applicable Lending Office to make) the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is a Credit Extension being made on the Closing Date, Section 4.01), the Administrative Agent shall, not later than 3:00 p.m. on the borrowing date specified in such Committed Loan Notice, make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied first, to the payment in full of any such L/C Borrowings, and second, to the Borrower as provided above.

(c) [Reserved].

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate. The determination of Term SOFR by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's (or any successor administrative agent's) prime rate used in determining the Base Rate promptly following the announcement of such change.

(e) Anything in clauses (a) through (d) above to the contrary notwithstanding, after giving effect to all Term Borrowings and Revolving Credit Borrowings, all conversions of Term Loans and Revolving Credit Loans from one Type to the other, and all continuations of Term Loans and Revolving Credit Loans as the same Type, there shall not be more than twelve (12) Interest Periods in effect at any time for all Borrowings of Term SOFR Loans, unless otherwise agreed by the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m. on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender's Applicable Percentage of such Borrowing, the Administrative Agent may assume that such Lender has made such Applicable Percentage available to the Administrative Agent on the date of such Borrowing in accordance with clause (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight



Rate plus any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(f) shall be conclusive in the absence of demonstrable error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(g) If the Maturity Date shall have occurred in respect of any Class of Revolving Credit Commitments at a time when another Class or Classes of Revolving Credit Commitments is or are in effect with a later Maturity Date, then on the earliest occurring Maturity Date all then outstanding Revolving Credit Loans shall be repaid in full on such date (and there shall be no adjustment to the participations in such Revolving Credit Loans as a result of the occurrence of such Maturity Date); provided, however, that if on the occurrence of such earliest Maturity Date (after giving effect to any repayments of Revolving Credit Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.03(k)), there shall exist sufficient unutilized Commitments of a Class of Revolving Credit Commitments so that the respective outstanding Revolving Credit Loans could be incurred pursuant to such other Class of Revolving Credit Commitments which will remain in effect after the occurrence of such Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Revolving Credit Loans and same shall be deemed to have been incurred solely pursuant to the relevant Class of Revolving Credit Commitments, and such Revolving Credit Loans shall not be so required to be repaid in full on such earliest Maturity Date.

(h) With respect to SOFR, Term SOFR or Daily Simple SOFR, the Administrative Agent will have the right to make Conforming Changes in consultation with the Borrower from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

Section 2.03. Letters of Credit.

(a) The Letter of Credit Commitments.

(i) Subject to the terms and conditions set forth herein, (1) each L/C Issuer agrees, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.03, (x) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit in Dollars for the account of the Borrower (provided that any Letter of Credit may be for the benefit of any Restricted Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (y) to honor drafts

under the Letters of Credit and (2) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; provided that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if after giving effect to such L/C Credit Extension, (x) the Revolving Credit Exposure of any Lender attributable to its Revolving Credit Commitment of any Class would exceed such Lender's Revolving Credit Commitment of such Class, or (y) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit; provided, further, that no L/C Issuer shall be obligated to issue, amend or renew any Letter of Credit if (I) the Outstanding Amount of Letters of Credit issued by such L/C Issuer, when aggregated with the Revolving Credit Exposure of such L/C Issuer (other than Revolving Credit Exposure attributable to Letters of Credit issued by such L/C Issuer) would exceed the L/C Issuer's aggregate Revolving Credit Commitments or (II) the Outstanding Amount of Letters of Credit issued by such L/C Issuer would exceed its L/C Commitment. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless (1) the Required Revolving Credit Lenders and (2) the relevant L/C Issuer have approved such expiry date;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless (1) all the Revolving Credit Lenders and (2) the relevant L/C Issuer have approved such expiry date, except to the extent such Letter of Credit is Cash Collateralized in accordance with Section 2.03(f) or otherwise backstopped pursuant to arrangements reasonably satisfactory to the relevant L/C Issuer;

(D) the issuance of such Letter of Credit would violate any Laws binding upon such L/C Issuer or one or more policies of the L/C Issuer applicable to letters of credit generally;

(E) the Letter of Credit is to be denominated in a currency other than Dollars;

(F) [reserved]; or

(G) any Lender is at that time a Defaulting Lender, unless after giving effect to the requested issuance the requirements of Section 2.16(e) have been satisfied.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto Renewal Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 1:00 p.m. at least three (3) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the relevant L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the relevant L/C Issuer has received written notice from the Administrative Agent, any Revolving Credit Lender or any Loan Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not have been satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (and, if requested, on behalf of a Restricted Subsidiary) or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, acquire from the relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Revolving Credit Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer shall agree to issue a Letter of Credit that has automatic renewal provisions (each, an “Auto-Renewal Letter of Credit”); provided that any such Auto-Renewal Letter of Credit must permit the relevant L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Nonrenewal Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the applicable Lenders shall be deemed to have authorized (but may not require) the relevant L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided that the relevant L/C Issuer shall not permit any such renewal if (A) the relevant L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone, followed promptly in writing, or in writing) on or before the day that is five (5) Business Days before the Nonrenewal Notice Date from the Administrative Agent or any Revolving Credit Lender, as applicable, or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the relevant L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. On the Business Day immediately following the Business Day on which the Borrower shall have received notice of any payment by an L/C Issuer under a Letter of Credit (or, if the Borrower shall have received such notice later than 1:00 p.m. on any Business Day, on the second succeeding Business Day) (each such date, an “Honor Date”), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing in Dollars by 1:00 p.m. on such Business Day. If the Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Percentage thereof under each Class of Revolving Credit Commitments held by such Revolving Credit Lender. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans under each Revolving Credit Facility to be disbursed on the Honor Date in an amount equal to the pro rata portion of the Unreimbursed Amount allocable to such Revolving Credit Facility, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the amount of the unutilized portion of the Revolving Credit Commitments of the Revolving Credit Lenders under such Revolving Credit Facility, and subject to the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice); provided that any drawing under a Letter of Credit that is not reimbursed on the date of drawing shall accrue interest from the date of drawing at the rate applicable to Initial Revolving Credit Loans that are Base Rate Loans

(or, to the extent of the participation in such drawing by any Revolving Credit Lender of another Class, the rate per annum then applicable to the Revolving Credit Loans of such Class) subject to the provisions set forth below. Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender (including any such Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer, in Dollars, at the Administrative Agent's Office in an amount equal to its Revolving Credit Percentage of any Unreimbursed Amount in respect of a Letter of Credit not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower under each Class of Revolving Credit Commitments held by such Revolving Credit Lender in an amount equal to the pro rata portion of such funds allocable to such Class of Revolving Credit Commitments. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) With respect to any Unreimbursed Amount in respect of a Letter of Credit that is not fully refinanced by Revolving Credit Borrowings of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loans or L/C Advance pursuant to this Section 2.03(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount under each applicable Revolving Credit Facility shall be solely for the account of the relevant L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Credit Lender's obligation to make Revolving Credit Loans (but not L/C Advances) pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the relevant L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent demonstrable error.

(vii) If, at any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with this Section 2.03(c), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to each Revolving Credit Lender its Revolving Credit Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(viii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(d) Obligations Absolute. The obligation of the Borrower to reimburse the relevant L/C Issuer for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant L/C Issuer or any other Person, whether in connection with this Agreement, the

transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or nonperfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit;

(vi) [reserved]; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party;

provided that the foregoing shall not excuse any L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(e) Role of L/C Issuers. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Revolving Credit Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) by such Person; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to,

and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (iii) of this Section 2.03(e); provided that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit (in each case, as determined by the final and non-appealable judgment of a court of competent jurisdiction). In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(f) Cash Collateral. (i) If any Event of Default occurs and is continuing and the Administrative Agent, the Required Lenders, or the Required Revolving Credit Lenders, as applicable, require the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02(c) or (ii) an Event of Default set forth under Section 8.01(f) or (g) occurs and is continuing, then the Borrower shall Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default), and shall do so not later than 2:00 p.m. on (x) in the case of the immediately preceding clause (i), (1) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 1:00 p.m., or (2) if clause (1) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (y) in the case of the immediately preceding clause (ii), the Business Day on which an Event of Default set forth under Section 8.01(f) or (g) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day, in either case, by 1:00 p.m. on such day. For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant L/C Issuer and the Revolving Credit Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to the then Outstanding Amount of all applicable L/C Obligations (determined as of the date of such Event of Default) ("Cash Collateral") pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Revolving Credit Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in accounts satisfactory to the Administrative Agent in the name of the Administrative Agent as custodian for the Borrower and for the benefit of the Secured Parties and may be invested in readily available Cash Equivalents at its sole discretion. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent (on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts



satisfactory to the Administrative Agent as aforesaid, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations plus costs incidental thereto and so long as no other Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower. If such Event of Default is cured or waived and no other Event of Default is then occurring and continuing, the amount of any Cash Collateral and accrued interest thereon shall be refunded to the Borrower.

(g) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender of any Class a Letter of Credit fee with respect to its participation in Letters of Credit equal to the product of (i) the Applicable Rate used to determine the interest rate applicable to Revolving Credit Loans of such Class that are Term SOFR Loans and (ii) the amount of such Revolving Credit Lender's L/C Obligations attributable to its Revolving Credit Commitment of such Class (other than Unreimbursed Amounts). Such Letter of Credit fees shall be computed on a quarterly basis in arrears. Such Letter of Credit fees shall be due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(h) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee (a "Fronting Fee") with respect to each Letter of Credit issued by it equal to 0.125% per annum of the daily maximum amount then available to be drawn under such Letter of Credit. Such fronting fees shall be computed on a quarterly basis in arrears. Such fronting fees shall be due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the Borrower shall pay directly to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(i) Conflict with Letter of Credit Application. Notwithstanding anything else to the contrary in any Letter of Credit Application, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(j) Addition of an L/C Issuer. A Revolving Credit Lender (or any of its Subsidiaries or Affiliates) may become an additional L/C Issuer hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Revolving Credit Lender, which such written agreement shall also provide that the commitment of such additional L/C Issuer to issue Letters of Credit shall not exceed at any time the amount set forth in such written agreement. The Administrative Agent shall notify the Revolving Credit Lenders of any such additional L/C Issuer.

(k) Provisions Related to Extended Revolving Credit Commitments. If the Maturity Date in respect of any Class of Revolving Credit Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other Classes of Revolving Credit Commitments in respect of which the Maturity Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Credit Lenders to purchase participations therein and to make Revolving Credit Loans and payments in respect thereof pursuant to Section 2.03(c)) under (and ratably participated in by Lenders pursuant to) the Revolving Credit Commitments in respect of such non-terminating Classes up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Credit Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.03(f). If, for any reason, such Cash Collateral is not provided or the reallocation does not occur, the Revolving Credit Lenders under the maturing Class shall continue to be responsible for their participating interests in the Letters of Credit. Except to the extent of reallocations of participations pursuant to clause (i) of the second preceding sentence, the occurrence of a Maturity Date with respect to a given Class of Revolving Credit Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Credit Lenders in any Letter of Credit issued before such Maturity Date. Commencing with the Maturity Date of any Class of Revolving Credit Commitments, the sublimit for Letters of Credit shall be agreed with the Lenders under the extended or otherwise outstanding Classes. For the avoidance of doubt, notwithstanding anything contained herein, the commitment of any L/C Issuer to act in its capacity as such cannot be extended beyond the Initial Revolving Credit Maturity Date (as in effect at the Closing Date) or increased without its prior written consent.

(l) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, an L/C Issuer shall not be responsible to the Borrower for, and such L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such L/C Issuer required or permitted under any Law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where such L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(m) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Restricted Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Restricted Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

Section 2.04. [Reserved].

Section 2.05. Prepayments.

(a) Optional Prepayments. (i) The Borrower may, upon delivery of a Notice of Loan Prepayment to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Borrowing of any Class in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than (A) 11:00 a.m. three (3) Business Days prior to any date of prepayment of Term SOFR Loans and (B) 1:00 p.m. one (1) Business Day prior to the date of prepayment of Base Rate Loans, (ii) any prepayment of Term SOFR Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, in each case, the entire principal amount thereof then outstanding and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term SOFR Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.04, if applicable. Each prepayment of Term Loans pursuant to this Section 2.05(a) shall be applied to the installments thereof as directed by the Borrower (it being understood and agreed that if the Borrower does not so direct at the time of such prepayment, such prepayment shall be applied against the scheduled repayments, if applicable, of Term Loans of the relevant Class under Section 2.07 in direct order of maturity) and shall be paid to the Appropriate Lenders in accordance with their respective Applicable Percentages.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a) if such prepayment is conditioned upon the consummation of a refinancing of all of the Facilities then outstanding or other transaction, which refinancing or other transaction shall not be consummated or shall otherwise be delayed.

(b) Mandatory Prepayments.

(i) [Reserved].

(ii) (A) Subject to Section 2.05(b)(ii)(B), if following the Closing Date (x) the Borrower or any Restricted Subsidiary Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d) (to the extent constituting a Disposition to a Loan Party, by a Restricted Subsidiary that is not a Loan Party, or pursuant to clause (iii) of the proviso thereto), (e), (f), (g), (i), (j), (k), (n), (o), (p), (q), (r), (s) or (t)), or (y) any Casualty Event occurs, which in the aggregate results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Cash Proceeds, the Borrower shall make a prepayment with respect to the Term Loans then outstanding, in accordance with Section 2.05(b)(ii)(C), in an aggregate principal amount equal to 100% of all such Net Cash Proceeds realized or received; provided that (1) no such prepayment shall be required pursuant to this Section 2.05(b)(ii)(A) (I) with respect to such portion of such Net Cash Proceeds that the Borrower

shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest in accordance with Section 2.05(b)(ii)(B) and (II) until the aggregate amount of Net Cash Proceeds not reinvested in accordance with Section 2.05(b)(ii)(B) within the time periods set forth therein and not previously applied to such a prepayment exceeds the greater of (x) \$37,500,000 and (y) 10% of LTM Consolidated EBITDA for any such Dispositions in the aggregate during such fiscal year (with unused amounts in respect of any fiscal year being carried over to the immediately succeeding fiscal year) (and only amounts in excess of such threshold in any fiscal year shall be required to be prepaid), (2) [reserved] and (3) if at or prior to the time that any such prepayment would be required, the Borrower or any of its Restricted Subsidiaries is required to offer to repurchase or prepay any Indebtedness that is secured by a Lien ranking *pari passu* with the Liens securing the Term Loans pursuant to the terms of the documentation governing such Indebtedness with the Net Cash Proceeds of such Disposition or Casualty Event (such Indebtedness required to be offered to be so repurchased or prepaid, “Other Applicable Indebtedness”), then the Borrower may apply such Net Cash Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time) to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(b)(ii)(A) shall be reduced accordingly (provided that (x) the portion of such Net Cash Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Net Cash Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Cash Proceeds shall be allocated to the Term Loans in accordance with the terms hereof and (y) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid, the declined amount shall promptly be applied to prepay the Term Loans in accordance with the terms hereof).

(B) With respect to any Net Cash Proceeds realized or received with respect to any Disposition (other than any Disposition specifically excluded from the application of Section 2.05(b)(ii)(A)) or any Casualty Event, at the option of the Borrower, the Borrower or any Restricted Subsidiary may reinvest an amount equal to all or any portion of such Net Cash Proceeds in assets useful for its business (other than working capital (except for short-term capital assets) but including (1) Permitted Acquisitions, (2) other Investments made pursuant to clause (c), (d), (t), (u) and (y) of Section 7.02 and (3) Capital Expenditures) within (x) five hundred forty (540) days following receipt of such Net Cash Proceeds (or, prior to the receipt of such Net Cash Proceeds (so long as such reinvestment was made or committed to within one hundred eighty (180) days prior to the receipt of such Net Cash Proceeds)) or (y) if the Borrower or any Restricted Subsidiary enters into a commitment to reinvest such Net Cash Proceeds within three hundred sixty-five (365) days following receipt thereof, one hundred eighty (180) days after the three hundred sixty-five (365) day period that follows receipt of such Net Cash Proceeds; provided that if any Net Cash Proceeds are not so reinvested by the deadline specified in clause (x) or (y) above, as applicable, or if any such Net Cash Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, an amount equal to 100% of any such Net Cash Proceeds shall be applied, to the extent required by Section 2.05(b)(ii)(A) and in accordance with Section 2.05(b)(ii)(C), to the prepayment of the Term Loans as set forth in this Section 2.05.

(C) On each occasion that the Borrower must make a prepayment of the Term Loans pursuant to this Section 2.05(b)(ii), the Borrower shall, within five (5) Business Days after the date of realization or receipt of such Net Cash Proceeds in the minimum amount specified above (or, in the case

of prepayments required pursuant to Section 2.05(b)(ii)(B), within five (5) Business Days of the deadline specified in clause (x) or (y) thereof, as applicable, or of the date the Borrower reasonably determines that such Net Cash Proceeds are no longer intended to be or cannot be so reinvested, as the case may be), make a prepayment, in accordance with Section 2.05(b)(v) below, of the principal amount of Term Loans in an amount equal to 100% of such Net Cash Proceeds realized or received that exceed the minimum amount specified above.

(iii) If, following the Closing Date, the Borrower or any Restricted Subsidiary incurs or issues any (A) Refinancing Term Loans, (B) Indebtedness pursuant to Section 7.03(w) or (C) Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans equal to 100% of all Net Cash Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt of such Net Cash Proceeds. If the Borrower obtains any Refinancing Revolving Commitments, the Borrower shall, concurrently with the receipt thereof, terminate Revolving Credit Commitments in an equivalent amount pursuant to Section 2.06.

(iv) Each prepayment of a Class of Term Loans pursuant to this Section 2.05(b) shall be applied to the installments thereof in direct order of maturity pursuant to Section 2.07 following the applicable prepayment event, and any mandatory prepayment pursuant to Section 2.05 shall be applied on a pro rata basis to all Classes of Term Loans then outstanding. After application of such prepayments to repay the Term Loans in full, such prepayments shall be applied, first, to prepay Revolving Credit Loans (with no required reduction of Revolving Credit Commitments), and second, if there is no Outstanding Amount of Revolving Credit Loans and if an Event of Default has occurred and is continuing, to Cash Collateralize the L/C Obligations, provided that if there are no outstanding L/C Obligations, any remaining prepayment amount shall be returned to the Borrower. Each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages subject to clause (v) of this Section 2.05(b).

(v) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clause (ii) of this Section 2.05(b) prior to 1:00 p.m. at least five (5) Business Days (or such lesser number of Business Days as shall be acceptable to the Administrative Agent) prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Applicable Percentage of the prepayment. Each Appropriate Lender may reject all, but not less than all, of its Applicable Percentage of any mandatory prepayment (such declined amounts, the "Declined Proceeds") of Term Loans required to be made pursuant to clause (ii) of this Section 2.05(b) by providing written notice (each, a "Rejection Notice") to the Administrative Agent and the Borrower no later than 5:00 p.m. three (3) Business Days after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the Declined Proceeds. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory repayment of Term Loans. Any Declined Proceeds shall be retained by the Borrower ("Retained Declined Proceeds").

(vi) If at any time, the Revolving Credit Exposure (excluding the face amount of any Letters of Credit that are Cash Collateralized or back-stopped to the reasonable satisfaction of the Administrative Agent) attributable to the Revolving Credit Commitments of any Class exceeds the Revolving Credit Commitments of such Class, the Borrower shall within one Business Day, upon notification by the Administrative Agent, prepay Revolving Credit Loans of such Class in an amount equal to the lesser of (A) the amount of such excess and (B) the aggregate principal amount of such Revolving Credit Loans, and if such excess remains after giving effect to such prepayment, the Borrower shall Cash Collateralize, in the amount required by Section 2.03(f), L/C Obligations attributable to such Class to the extent of such remaining excess; provided that nothing in this clause (b) (vi) shall reduce the Revolving Credit Commitments.

(vii) Notwithstanding any other provision of this Section 2.05(b), (A) to the extent that any or all of the Net Cash Proceeds of any Disposition by a Restricted Subsidiary that is a Foreign Subsidiary otherwise giving rise to a prepayment pursuant to Section 2.05(b)(ii) (a “Restricted Disposition”) or the Net Cash Proceeds of any Casualty Event of a Restricted Subsidiary that is a Foreign Subsidiary (a “Restricted Casualty Event”) would be prohibited or delayed by applicable local Law from being distributed or otherwise transferred to the Borrower, the realization or receipt of the portion of such Net Cash Proceeds so affected will not be taken into account in measuring the Borrower’s obligation to prepay Term Loans at the times provided in Section 2.05(b) for so long, but only so long, as the applicable local Law will not permit such distribution or transfer (the Borrower hereby agreeing to cause the applicable Restricted Subsidiary to promptly take all commercially reasonable actions available under the applicable local Law to permit such repatriation), and once distribution or transfer of any of such affected Net Cash Proceeds is permitted under the applicable local Law, the amount of such Net Cash Proceeds permitted to be distributed or transferred (net of additional Taxes payable or reserved against as a result thereof, to the extent such Taxes are not already deducted in accordance with the definition of “Net Cash Proceeds”) will be promptly (and in any event not later than five (5) Business Days after such distribution or transfer is permitted) taken into account in measuring the Borrower’s obligation to prepay the Term Loans pursuant to this Section 2.05(b) to the extent provided herein and (B) to the extent that the Borrower has determined in good faith (as set forth in a written notice delivered to the Administrative Agent) that repatriation of any or all of the Net Cash Proceeds of any Restricted Disposition or any Restricted Casualty Event attributable to a Foreign Subsidiary would have a material adverse Tax consequence (taking into account any foreign Tax credit or benefit received in connection with such repatriation), the amount of the Net Cash Proceeds so affected shall not be taken into account in measuring the Borrower’s obligation to repay Term Loans pursuant to this Section 2.05(b).

(c) Interest, Funding Losses, Etc. All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon (other than prepayments of Base Rate Revolving Credit Loans that are not made in connection with the termination or permanent reduction of the Revolving Credit Commitments), together with, in the case of any such prepayment of a Term SOFR Loan on a date prior to the last day of the applicable Interest Period (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise), any amounts owing in respect of such Term SOFR Loan pursuant to Section 3.04.

Section 2.06. Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class; provided that (i) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$100,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Revolving Credit Commitments of any Class if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings of such Class would exceed the aggregate Revolving Credit Commitments of such Class and (iv) if, after giving effect to any reduction of Revolving Credit Commitments, the Letter of Credit Sublimit exceeds the aggregate Revolving Credit Commitments, such sublimit shall be automatically reduced by the amount of such excess. The amount of any such Revolving Credit Commitment reduction shall not be applied to the Letter of Credit Sublimit unless otherwise specified by the Borrower. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of Commitments if such termination is conditioned upon the consummation of a refinancing of all of the Facilities or other transaction, which refinancing or other transaction shall not be consummated or otherwise shall be delayed.

(b) Mandatory. Upon each making of an Initial Term Loan by an Initial Term Lender pursuant to Section 2.01, the Initial Term Commitment of such Initial Term Lender shall be automatically and permanently reduced in an amount equal to such Initial Term Loan. On the Delayed Draw Termination Date, any undrawn Initial Term Commitments shall terminate. Each Class of Revolving Credit Commitments shall terminate on the applicable Maturity Date.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of unused Commitments of any Class under Section 2.06(a). Upon any reduction of the unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Applicable Percentage of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.06). All Commitment Fees accrued until the effective date of any termination of Initial Revolving Credit Commitments shall be paid on the effective date of such termination. All Ticking Fees accrued until the effective date of any termination of Initial Term Commitments shall be paid on the effective date of such termination.

Section 2.07. Repayment of Loans.

(a) Initial Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Initial Term Lenders holding Initial Term Loans (i) on the last Business Day of each March, June, September and December, commencing with the last day of the first full fiscal quarter ending after the earlier of (x) the Delayed Draw Termination Date and (y) the date on which the Initial Term Loans are fully drawn, an aggregate principal amount equal to 1.25% of the aggregate principal amount of the Initial Term Loans outstanding as of such earlier date and (ii) on the Initial Term Maturity Date, the aggregate principal amount of all Initial Term Loans outstanding on such date; provided that payments required by clause (i) above shall be reduced as a result of the application of prepayments in accordance with Section 2.05. In the event any Incremental Term Loans or Extended Term Loans are made, such Incremental Term Loans or Extended Term Loans, as applicable, shall be repaid by the

Borrower in the amounts and on the dates set forth in the definitive documentation with respect thereto and on the applicable Maturity Date thereof.

(b) [Reserved].

(c) [Reserved].

(d) Revolving Credit Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for any Revolving Credit Facility the aggregate principal amount of all of its Revolving Credit Loans outstanding under such Revolving Credit Facility on such date.

Section 2.08. Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) The Borrower shall pay interest on past due amounts under this Agreement at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand to the fullest extent permitted by and subject to applicable Laws, including in relation to any required additional agreements.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09. Fees. In addition to certain fees described in Sections 2.03(g) and (h):

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Initial Revolving Credit Lender in accordance with its Applicable Percentage, a commitment fee (the "Commitment Fee") equal to the amount provided for in the definition of "Applicable Rate" per annum on the actual daily amount by which the aggregate Initial Revolving Credit Commitments exceeds the sum of (A) the Outstanding Amount of Initial Revolving Credit Loans and (B) the Outstanding Amount of L/C Obligations attributable to the Initial Revolving Credit Commitments. The Commitment Fee shall accrue at all times from the Closing Date until the Initial Revolving Credit Maturity Date, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with March 31, 2023, and on the Initial Revolving Credit Maturity Date. The Commitment Fee shall be calculated quarterly in arrears.



(b) Ticking Fee. The Borrower shall pay to the Administrative Agent, for the account of each Initial Term Lender, a ticking fee (the “Ticking Fee”) calculated for each day at the Applicable Ticking Fee Rate for such day, on the amount of the unused Initial Term Commitment of such Initial Term Lender on such day, which shall accrue during the period from the Closing Date to but excluding the earlier of (x) the Delayed Draw Termination Date and (y) the date on which the Initial Term Loans are drawn in full. The Ticking Fee shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with March 31, 2023. The Ticking Fee shall be calculated quarterly in arrears.

(c) Other Fees. The Borrower shall pay to the Arrangers and the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Arranger or Agent).

Section 2.10. Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be made on the basis of a year of 365 days, or 366 days, as applicable, and actual days elapsed. All other computations of fees and interest, including Term SOFR Loans, shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11. Evidence of Indebtedness. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by one or more entries in the Register. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register shall be conclusive in the absence of demonstrable error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender or its registered assigns, which shall evidence such Lender’s Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

Section 2.12. Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent’s Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender’s Applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m.

shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such extension would cause payment of interest on or principal of Term SOFR Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(i) if the Borrower failed to make such payment, then the applicable Lender agrees to pay to the Administrative Agent forthwith on demand the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect, it being understood that nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at the interest rate applicable to such Loan. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent demonstrable error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.04. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Applicable Percentage of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13. Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; provided that (x) if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without

further interest thereon, (y) the provisions of this Section 2.13 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in L/C Obligations to any assignee or participant and (z) the provisions of this Section 2.13 shall not be construed to apply to any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans or Commitments of that Class or any amendment to the Applicable Rate (or other pricing term, including any fee, discount or premium) and/or any other amendment in respect of Loans or Commitments of Lenders that have consented to any such amendment. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of demonstrable error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14. Incremental Credit Extensions.

(a) At any time and from time to time, subject to the terms and conditions set forth herein, the Borrower may, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request (1) to increase the amount of Initial Term Loans or add one or more additional tranches of “term A” loans (any such Initial Term Loans, or additional tranche of “term A” loans, the “Incremental Term A Loans”), (2) to add one or more tranches of “term B” loans (any such tranche of “term B” loans, the “Incremental Term B Loans” and together with the Incremental Term A Loans, collectively, the “Incremental Term Loans”), and/or (3) one or more increases in the Revolving Credit Commitments of any Class (a “Revolving Credit Commitment Increase”) and/or the establishment of one or more new Classes of Revolving Credit Commitments (“Additional Revolving Credit Commitments” and, together with any Revolving Credit Commitment Increases, the “Incremental Revolving Credit Commitments”; together with the Incremental Term Loans, the “Incremental Facilities”). Notwithstanding anything to the contrary herein, the aggregate principal amount of all Incremental Facilities (other than Refinancing Term Loans and Refinancing Revolving Commitments) (determined at the time of incurrence), together with the aggregate principal amount of all Incremental Equivalent Debt, shall not exceed an amount equal to (i) the Unrestricted Incremental Amount, plus (ii) the amount of any voluntary prepayments, repurchases, redemptions or other retirements of the Term Loans, any Incremental Term Loans or Incremental Equivalent Debt and voluntary permanent reductions after the Closing Date of the Revolving Credit Commitments or any Incremental Equivalent Debt constituting a revolving credit commitment (including pursuant to debt buy-backs made by the Borrower or any Restricted Subsidiary pursuant to “Dutch Auction” procedures and open market purchases permitted hereunder, in an amount equal to the discounted amount actually paid in cash in respect thereof) that in each case are (x) secured on a *pari passu* basis with the Obligations or (y) to the extent incurred under the Unrestricted Incremental Amount, unsecured, but excluding prepayments with the proceeds of substantially concurrent incurrence of other long term Indebtedness (other than

borrowings under any Revolving Credit Facility or other revolving Indebtedness) (this clause (ii), the “Voluntary Prepayment Amount”) plus (iii) an additional amount so long as, after giving Pro Forma Effect to the incurrence of such amount and after giving effect to any Permitted Acquisition or permitted Investment consummated in connection therewith and all other appropriate Pro Forma Adjustments (but excluding the cash proceeds of any such Incremental Facilities or Incremental Equivalent Debt, as the case may be), the Secured Net Leverage Ratio for the most recently ended Test Period does not exceed 2.00 to 1.00, assuming for purposes of such calculation that the full committed amount of any new Incremental Revolving Credit Commitments and/or any Incremental Equivalent Debt constituting a revolving credit commitment then being incurred shall be treated as outstanding Indebtedness (this clause (iii), the “Incremental Incurrence Test”), it being understood and agreed that Incremental Facilities and Incremental Equivalent Debt may be incurred under the Incremental Incurrence Test prior to utilization of the Unrestricted Incremental Amount and the Voluntary Prepayment Amount, and if there is availability under the Incremental Incurrence Test, the Unrestricted Incremental Amount and the Voluntary Prepayment Amount, unless otherwise elected by the Borrower, then the Borrower will be deemed to have elected to use the Incremental Incurrence Test prior to utilization of the Unrestricted Incremental Amount and the Voluntary Prepayment Amount. Each Incremental Facility shall be in an integral multiple of \$1,000,000 and be in an aggregate principal amount that is not less than \$5,000,000 in case of Incremental Term Loans or \$1,000,000 in case of Incremental Revolving Credit Commitments, provided that such amount may be less than the applicable minimum amount if such amount represents all the remaining availability hereunder as set forth above. Each Incremental Facility may not be (A) guaranteed by any Person that does not guarantee the other Obligations hereunder, and (B) secured by any assets not constituting Collateral; provided that in the case of any Incremental Facility that is funded into Escrow pursuant to customary escrow arrangements, such Incremental Facility may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the time of the release from Escrow of such funds.

(b) Any Incremental Term Loans (other than Refinancing Term Loans) (i) may participate (x) on a pro rata basis, a less than pro rata basis, or a greater than pro rata basis in any voluntary repayments or prepayments hereunder with any then outstanding Term Loans and (y) on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments hereunder with any then outstanding Term Loans, (ii) shall have upfront fees, interest rate margins, an amortization schedule (subject to clauses (iii) and (iv) below), optional prepayment or redemption terms and other terms as determined by the Borrower and the lenders thereunder, (iii) other than with respect to any Qualifying Bridge Facility, shall not have a final maturity date earlier than the Latest Maturity Date applicable to any then outstanding Term Loans, and in addition, (A) in the case of Incremental Term A Loans, shall not have a final maturity date earlier than the Latest Maturity Date applicable to any then outstanding Term A Loans and (B) in the case of Incremental Term B Loans, shall not have a final maturity date earlier than the Latest Maturity Date applicable to any then outstanding Incremental Term B Loans, but in each case may have a springing maturity date consistent with the Initial Term Facility and the Initial Revolving Credit Facility, (iv) other than with respect to any Qualifying Bridge Facility, shall not have a Weighted Average Life to Maturity that is shorter than the longest remaining Weighted Average Life to Maturity of any then outstanding Term Loans, and in addition, (A) in the case of Incremental Term A Loans, shall not have a Weighted Average Life to Maturity that is shorter than the longest remaining Weighted Average Life to Maturity of any then outstanding Term A Loans and (B) in the case of Incremental Term B Loans, shall not have a Weighted Average Life to Maturity that is shorter than the longest remaining Weighted Average Life to Maturity of any then

outstanding Incremental Term B Loans, (v) except to the extent otherwise permitted by this Section 2.14, shall have terms that are reasonably satisfactory to the Administrative Agent or otherwise are not materially more restrictive (when taken as a whole) on the Borrower and its Restricted Subsidiaries than those applicable to any then outstanding Term Loans, and in addition, (A) in the case of Incremental Term A Loans, not materially more restrictive (when taken as a whole) on the Borrower and its Restricted Subsidiaries than those applicable to any then outstanding Term A Loans, except for any terms that are applicable only after the Latest Maturity Date applicable to any then outstanding Term A Loans or are otherwise added for the benefit of the Lenders of any then outstanding Term A Loans and (B) in the case of Incremental Term B Loans, not materially more restrictive (when taken as a whole) on the Borrower and its Restricted Subsidiaries than those applicable to any then outstanding Incremental Term B Loans, except for any terms that are applicable only after the Latest Maturity Date applicable to any then outstanding Incremental Term B Loans or are otherwise added for the benefit of the Lenders of any then outstanding Incremental Term B Loans, and (vi) that are Incremental Term B Loans may, subject to the foregoing clause (v), contain “most favored lender,” call protection and “excess cash flow” mandatory prepayment provisions as well as other provisions then customary for loans of such type.

(c) Any Incremental Revolving Credit Commitments (other than Refinancing Revolving Commitments) (i) for purposes of prepayments shall be treated substantially the same as (and in any event no more favorably than) the then-existing Revolving Credit Commitments, (ii) shall have interest rate margins and (subject to clauses (iii) and (iv) below) an amortization schedule as determined by the Borrower and the lenders thereunder (provided that (A) in the case of a Revolving Credit Commitment Increase, the maturity date of such Revolving Credit Commitment Increase shall be the same as the Maturity Date applicable to the Class of Revolving Credit Commitments being so increased, such Revolving Credit Commitment Increase shall require no scheduled amortization or mandatory commitment reduction prior to the final Maturity Date applicable to the Class of Revolving Credit Commitments being so increased and the Revolving Credit Commitment Increase shall be on the exact same terms and pursuant to the exact same documentation applicable to the Class of Revolving Credit Commitments being so increased and (B) in the case of an Additional Revolving Credit Commitment, the maturity date of such Additional Revolving Credit Commitment shall be no earlier than the Latest Maturity Date applicable to any then-existing Revolving Credit Commitments (but may have a springing maturity date consistent with the Initial Revolving Credit Facility) and such Additional Revolving Credit Commitment shall require no scheduled amortization or mandatory commitment reduction prior to the Latest Maturity Date of the Revolving Credit Commitments), (iii) shall not have a final maturity date earlier than the Latest Maturity Date of any then-existing Revolving Credit Commitments (but may have a springing maturity date consistent with the Initial Revolving Credit Facility), (iv) shall have no scheduled mandatory commitment reduction in respect thereof prior to the Latest Maturity Date of the Revolving Credit Commitments and (v) except to the extent otherwise permitted by this Section 2.14, shall have terms that are reasonably satisfactory to the Administrative Agent or otherwise are not materially more restrictive (when taken as a whole) on the Borrower and its Restricted Subsidiaries than those applicable to any then-existing Revolving Credit Commitments, except for any terms that are applicable only after the Latest Maturity Date applicable to any then-existing Revolving Credit Commitments or are otherwise added for the benefit of the Revolving Credit Lenders hereunder.

(d) Each notice from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans and/or Incremental Revolving Credit Commitments. Any additional bank, financial institution, existing Lender or other

Person that elects to extend Incremental Term Loans or Incremental Revolving Credit Commitments shall be reasonably satisfactory to the Borrower and, to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Person, the Administrative Agent and each L/C Issuer (any such bank, financial institution, existing Lender or other Person being called an “Additional Lender”) and, if not already a Lender, shall become a Lender under this Agreement pursuant to an amendment (an “Incremental Facility Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, the Administrative Agent, such Additional Lender and, in the case of any Incremental Revolving Credit Commitments, each L/C Issuer. No Incremental Facility Amendment shall require the consent of any Lenders other than the Additional Lenders with respect to such Incremental Facility Amendment and, in the case of Incremental Revolving Credit Commitments, each L/C Issuer. No Lender shall be obligated to provide any Incremental Term Loans or Incremental Revolving Credit Commitments, unless it so agrees, and shall be deemed to have declined if it fails to respond to the applicable notice from the Borrower pursuant to this Section 2.14. Commitments in respect of any Incremental Term Loans or Incremental Revolving Credit Commitments shall become Commitments under this Agreement. Notwithstanding anything to the contrary herein, an Incremental Facility Amendment may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. Any Incremental Facility Amendment shall be pursuant to documentation to be mutually agreed among the Borrower, the Administrative Agent and the Lenders providing such Incremental Facility.

(e) The effectiveness of any Incremental Facility Amendment shall, unless otherwise agreed to by the Administrative Agent and the Additional Lenders, be subject to the satisfaction on the date thereof (each, an “Incremental Facility Closing Date”) of each of the conditions set forth in Section 4.02 (provided that in the case of Incremental Facilities the proceeds of which will be used to finance a Limited Condition Transaction, (1) governed by the laws of the United States, the conditions set forth in Section 4.02 may be modified in a manner customary for “SunGard” limited condition transactions, in each case as agreed by the Borrower and the Lenders providing such Incremental Facility and (2) governed by laws other than the laws of the United States, only customary “certain funds” conditions for the applicable jurisdiction or as required by the terms of the documentation governing such Limited Condition Transaction will be required to be satisfied). The proceeds of any Incremental Term Loans will be used for the purposes set forth in the applicable Incremental Facility Amendment. Upon each increase in the Revolving Credit Commitments of any Class pursuant to this Section 2.14, each Revolving Credit Lender of such Class immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the Incremental Revolving Credit Commitment (each, an “Incremental Revolving Lender”) in respect of such increase, and each such Incremental Revolving Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Credit Lender’s participations hereunder in outstanding Letters of Credit such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in Letters of Credit under such Revolving Credit Facility will equal the percentage of the aggregate Revolving Credit Commitments of such Class represented by such Revolving Credit Lender’s Revolving Credit Commitment of such Class. Additionally, if any Revolving Credit Loans are outstanding under a Revolving Credit Facility at the time any Incremental Revolving Credit Commitments are established under such Revolving Credit Facility, the Revolving Credit Lenders of such Class immediately after effectiveness of such Incremental Revolving Credit Commitments shall purchase and assign at par such amounts of the Revolving Credit Loans

outstanding under such Revolving Credit Facility at such time as the Administrative Agent may require such that each Revolving Credit Lender under such Revolving Credit Facility holds its Applicable Percentage of all Revolving Credit Loans outstanding under such Revolving Credit Facility immediately after giving effect to all such assignments. The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(f) Any portion of any Incremental Facility incurred other than under the Incremental Incurrence Test may be reclassified at any time, as the Borrower may elect from time to time, as incurred under the Incremental Incurrence Test if the Borrower meets the ratio under the Incremental Incurrence Test at such time on a Pro Forma Basis at any time subsequent to the incurrence of such Incremental Facility. At any time that an Incremental Facility is incurred and the Borrower does not otherwise make an election, such Incremental Facility shall be deemed to have been incurred (x) under the Incremental Incurrence Test, before any capacity under the Unrestricted Incremental Amount or the Voluntary Prepayment Amount is used and (y) under the Voluntary Prepayment Amount, before any capacity under the Unrestricted Incremental Amount is used.

Section 2.15. Extensions of Term Loans and Revolving Credit Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “Extension Offer”) made from time to time by the Borrower to all Lenders of any Class of Term Loans or any Class of Revolving Credit Commitments, in each case on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans or Revolving Credit Commitments of the applicable Class) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date of each such Lender’s Term Loans and/or Revolving Credit Commitments of the applicable Class and otherwise modify the terms of such Term Loans and/or Revolving Credit Commitments pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans and/or Revolving Credit Commitments (and related outstandings) and/or modifying the amortization schedule in respect of such Lender’s Term Loans, and which such extensions shall not be subject to any “no default” requirement, pro forma compliance with any leverage ratio or other financial tests or “most favored nations provisions”) (each, an “Extension,” and any Extended Term Loans shall constitute a separate Class of Term Loans from the Class of Term Loans from which they were converted, and any Extended Revolving Credit Commitments shall constitute a separate Class of Revolving Credit Commitments from the Class of Revolving Credit Commitments from which they were converted, and it being understood that an Extension may be in the form of an increase in the amount of any other outstanding Class of Term Loans or Revolving Credit Commitments otherwise satisfying the criteria set forth below), so long as the following terms are satisfied: (i) except as to interest rates, fees and final maturity (which shall be determined by the Borrower and set forth in the relevant Extension Offer), the Revolving Credit Commitment of any Revolving Credit Lender that agrees to an extension with respect to such Revolving Credit Commitment (an “Extending Revolving Credit Lender”) extended pursuant to an Extension (an “Extended Revolving Credit Commitment”), and the related outstandings, shall be a Revolving Credit Commitment (or related outstandings, as the case may be) with the same terms as the original Class of Revolving Credit Commitments; provided, that at no time shall there be Revolving



Credit Commitments hereunder (including Extended Revolving Credit Commitments and any original Revolving Credit Commitments) which have more than three different maturity dates, (ii) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to the immediately succeeding clauses (iii), (iv) and (v), be determined by the Borrower and set forth in the relevant Extension Offer), the Term Loans of any Term Lender that agrees to an extension with respect to such Term Loans extended pursuant to any Extension (“Extended Term Loans”) shall have the same terms as the Class of Term Loans subject to such Extension Offer other than with respect to covenants or other provisions applicable to periods after the Latest Maturity Date applicable to any then-outstanding Term Loans, (iii) the maturity date of any Extended Term Loans shall be no earlier than the then maturity date of the Term Loans extended thereby (but may have a springing maturity date consistent with the Initial Term Facility and the Initial Revolving Credit Facility), (iv) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby, (v) any Extended Term Loans may participate (A) on a pro rata basis, a less than pro rata basis, or a greater than pro rata basis in any voluntary repayments or prepayments hereunder and (B) on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments hereunder, in each case as specified in the respective Extension Offer, (vi) if the aggregate principal amount of the class of Term Loans (calculated on the face amount thereof) or Revolving Credit Commitments, as the case may be, in respect of which Term Lenders or Revolving Credit Lenders of such Class, as the case may be, shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans or Revolving Credit Commitments of such Class, as the case may be, offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans or Revolving Credit Loans of such Class, as the case may be, of such Term Lenders or Revolving Credit Lenders, as the case may be, shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders or Revolving Credit Lenders, as the case may be, have accepted such Extension Offer, (vii) all documentation in respect of such Extension shall be consistent with the foregoing, (viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower and (ix) the Minimum Tranche Amount shall be satisfied unless waived by the Administrative Agent. No Lender shall be obligated to extend its Term Loans or Revolving Credit Commitments unless it so agrees.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.15, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.05 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, provided that (x) the Borrower may at its election specify as a condition (a “Minimum Extension Condition”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower’s sole discretion and may be waived by the Borrower) of Term Loans or Revolving Credit Commitments (as applicable) of any or all applicable Classes be tendered and (y) no Class of Extended Term Loans shall be in an amount of less than \$10,000,000 (the “Minimum Tranche Amount”), unless such Minimum Tranche Amount is waived by the Administrative Agent. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.15 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Credit Commitments on the such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.05, 2.12 and

2.13) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.15.

(c) No consent of any Lender or the Administrative Agent shall be required to effectuate any Extension, other than (i) the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans and/or Revolving Credit Commitments (or a portion thereof) and (ii) with respect to any Extension of Revolving Credit Commitments, the consent of each L/C Issuer (which consent shall not be unreasonably withheld, conditioned or delayed); provided that any Lender that elects not to agree to such Extension (it being understood that any Lender that fails to respond to an Extension Offer shall be deemed to have declined) (such Lender being a “Non-Extending Lender”) may be replaced by the Borrower pursuant to Section 3.06. All Extended Term Loans, Extended Revolving Credit Commitments and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents that are secured by the Collateral on a *pari passu* basis with all other applicable Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to establish new Classes in respect of Revolving Credit Commitments or Term Loans so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Classes, in each case on terms consistent with this Section 2.15.

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days’ (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including, without limitation, regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.15.

Section 2.16. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) (i) the Commitment Fee shall cease to accrue on any of the Initial Revolving Credit Commitments, Incremental Revolving Credit Commitments or Extended Revolving Credit Commitments of such Defaulting Lender pursuant to Section 2.09(a) and (ii) the Ticking Fee shall cease to accrue on any of the Initial Term Commitments of such Defaulting Lender pursuant to Section 2.09(b);

(b) the Commitments, Outstanding Amount of Term Loans and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders, the Required Lenders, the Required Revolving Credit Lenders or the Required Initial Term Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 10.01); provided that (x) any waiver, amendment or modification of the type described in clause (a), (b) or (c) of the first proviso in Section 10.01 that would apply to the Revolving Credit Commitments or Obligations owing to such Defaulting Lender or (y) any waiver, amendment or modification (other than as described in the foregoing clause (x)) requiring the consent of all Lenders or each affected Lender) which affects such Defaulting Lender disproportionately when

compared to other affected Lenders, in each case, shall require the consent of such Defaulting Lender with respect to the effectiveness of such waiver, amendment or modification with respect to the Revolving Credit Commitments or Obligations owing to such Defaulting Lender;

(c) any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to any L/C Issuer hereunder; third, to cash collateralize L/C Obligations with respect to such Defaulting Lender in accordance with this section; fourth, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; sixth, so long as no Default exists, to the payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by any Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and seventh, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, if such payment is a payment of the principal amount of any Loans, such payment shall be applied solely to pay the relevant Loans of the relevant non-Defaulting Lenders on a pro rata basis prior to being applied in the manner set forth in this clause (c);

(d) if any L/C Obligations exist at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the L/C Obligations of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders of the applicable Class in accordance with their respective Applicable Percentages but only to the extent that each such non-Defaulting Lender's Revolving Credit Exposure attributable to its Revolving Credit Commitment of such Class does not exceed its Revolving Credit Commitment of such Class;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within three (3) Business Days following notice by the Administrative Agent Cash Collateralize for the benefit of each L/C Issuer only the Borrower's obligations corresponding to such Defaulting Lender's L/C Obligations (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.03(f) for so long as such L/C Obligations are outstanding;

(iii) if the Borrower Cash Collateralizes any portion of such Defaulting Lender's L/C Obligations pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.03(h) with respect to such Defaulting Lender's L/C Obligations during the period such Defaulting Lender's L/C Obligations are Cash Collateralized;

(iv) if the L/C Obligations of the non-Defaulting Lenders are reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.09(a) and 2.03(h) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentage; and

(v) if all or any portion of such Defaulting Lender's L/C Obligations is neither reallocated nor Cash Collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of any L/C Issuer or any other Lender hereunder, all letter of credit fees payable under Section 2.03(h) with respect to such Defaulting Lender's L/C Obligations shall be payable to the L/C Issuer until and to the extent that such L/C Obligations are reallocated and/or Cash Collateralized; and

(e) so long as such Lender is a Defaulting Lender, no L/C Issuer shall be required to issue, amend or increase any Letter of Credit, unless it has received assurances satisfactory to it that non-Defaulting Lenders will cover the related exposure and/or cash collateral will be provided by the Borrower in accordance with Section 2.16(d), and participating interests in any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.16(d)(i) (and such Defaulting Lender shall not participate therein).

In the event that the Administrative Agent, the Borrower, and each L/C Issuer each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the L/C Obligations of the Revolving Credit Lenders of the applicable Class shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Revolving Credit Loans of the other Revolving Credit Lenders of such Class as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Revolving Credit Loans in accordance with its Applicable Percentage; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided, further, that, except to the extent otherwise expressly agreed by the affected parties and subject to Section 10.25, no change hereunder from Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

### ARTICLE III

#### Taxes, Increased Costs Protection and Illegality.

##### Section 3.01. Taxes.

(a) Except as provided in this Section 3.01, all payments by any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any Taxes unless required by applicable Law. If any applicable withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document, (i) if such Taxes are Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after all required deductions have been made (including any such deductions applicable to additional sums payable under this Section 3.01), the applicable Lender (or, in the case of any amount received by an Agent for its own account, such Agent) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such applicable withholding agent shall make such deductions, (iii) such applicable withholding agent shall pay the full amount

deducted to the relevant Governmental Authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment by such applicable withholding agent (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), such applicable withholding agent shall furnish to the Borrower and such Agent or Lender (as the case may be) the original or a facsimile copy of a receipt evidencing payment thereof to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Administrative Agent.

(b) In addition, but without duplication of any amounts payable pursuant to Section 3.01(a) or (c), the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, all Other Taxes.

(c) Without duplication of any amounts payable pursuant to Section 3.01(a) or Section 3.01(b), the Borrower shall indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes (including any Indemnified Taxes imposed or asserted by any jurisdiction in respect of amounts payable under this Section 3.01) payable by such Agent and such Lender and (ii) any reasonable expenses arising therefrom or with respect thereto, in each case whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Such Agent or Lender, as the case may be, will, at the Borrower's request, provide the Borrower with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts which shall be conclusive absent manifest error. Payment under this Section 3.01(c) shall be made within ten (10) days after the date such Lender or such Agent makes a demand therefor. Notwithstanding anything to the contrary contained in this Section 3.01(c), no Loan Party shall be required to indemnify any Agent or any Lender pursuant to this Section 3.01(c) for any incremental interest, penalties or expenses resulting from the failure of such Agent or Lender to notify the Loan Party of such possible indemnification claim within 180 days after such Agent or Lender receives written notice from the applicable Governmental Authority of the specific tax assessment giving rise to such indemnification claim.

(d) If any Lender or Agent determines, in its reasonable discretion, that it has received a refund in respect of any Indemnified Taxes as to which indemnification or additional amounts have been paid to it by any Loan Party pursuant to this Section 3.01, it shall promptly remit an amount equal to such refund as soon as practicable after it is determined that such refund pertains to Indemnified Taxes (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Indemnified Taxes giving rise to such refund plus any interest included in such refund by the relevant Governmental Authority attributable thereto) to the Borrower, net of all reasonable out-of-pocket expenses (including any Taxes) of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Lender or Agent, as the case may be, agrees promptly to return an amount equal to such refund (plus any applicable interest, additions to tax or penalties) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. Such Lender or Agent, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant Governmental Authority (provided that such Lender or Agent may delete any information therein that such Lender or Agent deems confidential). Nothing herein contained shall interfere with the right of a Lender or Agent to arrange its Tax affairs in

whatever manner it thinks fit, nor oblige any Lender or Agent to claim any Tax refund or to make available its Tax returns or to disclose any information relating to its Tax affairs or any computations in respect thereof, nor require any Lender or Agent to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled. Notwithstanding anything to the contrary in this Section 3.01(d), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.01(d) the payment of which would place such indemnified party in a less favorable net after-Tax position than such indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

(e) Each Lender shall, upon the occurrence of any event giving rise to the operation of Section 3.01(a) or (c) with respect to such Lender, if requested by the Borrower, use commercially reasonable efforts (subject to legal and regulatory restrictions), at the Borrower's expense, to designate another Applicable Lending Office for any Loan affected by such event; provided that such efforts are made on terms that, in the judgment of such Lender, cause such Lender and its Applicable Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section 3.01(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.01(a) or (c).

(f) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by applicable Law, or reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under any Loan Document. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (i), (ii) and (iii) of this Section 3.01(f)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any documentation specifically referenced below) expired, obsolete or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent in writing of its ineligibility to do so.

Without limiting the generality of the foregoing:

(i) Each Lender that is a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding;

(ii) Each Lender that is not a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before

the date on which it becomes a party to this Agreement (and from time to time thereafter when required by Law or upon the reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for benefits of an income Tax treaty to which the United States is a party,

(B) two duly completed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) or the Code, (x) a certificate, in substantially the form of Exhibit L (any such certificate a “United States Tax Compliance Certificate”), or any other documentation approved by the Administrative Agent, to the effect that such Lender is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and that no payments under the Loan Documents are effectively connected with such Lender’s conduct of a U.S. trade or business, and (y) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, as applicable (or any successor forms), a United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information from each beneficial owner, as applicable (provided that, if the Lender is a partnership and not a participating Lender, and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) two duly completed copies of any other documentation prescribed by applicable U.S. federal income Tax Laws (including the Treasury regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding Tax on any payments to such Lender under the Loan Documents.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code)

and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their FATCA obligations, to determine whether such Lender has or has not complied with such Lender's FATCA obligations and to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.01(f)(iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 3.01(f), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(f).

(g) The Administrative Agent shall provide the Borrower with two duly completed original copies of, if it is a United States person (as defined in Section 7701(a)(30) of the Code), Internal Revenue Service Form W-9 certifying that it is exempt from U.S. federal backup withholding, and, if it is not a United States person, (i) Internal Revenue Service Form W-8ECI with respect to payments to be received by it as a beneficial owner and (ii) Internal Revenue Service Form W-8IMY (together with required accompanying documentation) with respect to payments to be received by it on behalf of the Lenders, and shall update such forms periodically upon the reasonable request of the Borrower. Notwithstanding any other provision of this Section 3.01(g), the Administrative Agent shall not be required to deliver any documentation that such Administrative Agent is not legally eligible to deliver.

(h) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand thereof, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case that are payable or paid by the Administrative Agent in connection with this Agreement or any other Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph.

(i) For the avoidance of doubt, for purposes of this Section 3.01, the term "Lender" includes any L/C Issuer and the term "applicable Law" includes FATCA.

(j) Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.



Section 3.02. Inability to Determine Rates.

(a) If in connection with any request for a Term SOFR Loan or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any of such Loans, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.02(c) and the circumstances under clause (i) of Section 3.02(c) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR or the determination of the Term SOFR component of the Base Rate in connection with an existing or proposed Base Rate Loan, or (ii) the Administrative Agent or the Required Lenders determine that for any reason that Term SOFR for any requested Interest Period does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender.

(b) Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Loans, or to convert Base Rate Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.02(a)), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month or six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary, or

(ii) the Applicable Authority or any successor administrator of the Term SOFR Screen Rate has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be representative or made available, or permitted to be used for determining the interest rate of Dollar denominated syndicated loans, or shall or will otherwise cease, provided that, in

each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such interest period(s) of Term SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer representative or available permanently or indefinitely, the “Scheduled Unavailability Date”),

then, on a date and time determined by the Administrative Agent (any such date, the “Term SOFR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR plus the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “Successor Rate”).

If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.02(c)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section 3.02 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a “Successor Rate”. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent (in consultation with the Borrower).

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time, in consultation with the Borrower, and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

Section 3.03. Increased Cost and Reduced Return; Capital Adequacy.

(a) If any Lender determines that as a result of any Change in Law, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding, maintaining, continuing or converting to any Loan or issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.03(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes indemnifiable under Section 3.01 or (ii) Excluded Taxes), then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction; provided that in the case of any Change in Law only applicable as a result of the proviso set forth in the definition thereof, such Lender will only be compensated for such amounts that would have otherwise been imposed under the applicable increased cost provisions and only to the extent the applicable Lender certifies that it is its general policy or practice to impose such charges on other similarly situated borrowers under comparable syndicated credit facilities.

(b) If any Lender determines that as a result of any Change in Law regarding capital adequacy or liquidity requirements or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its Applicable Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within thirty (30) days after receipt of such demand.

(c) Subject to Section 3.05(b), failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.03 shall not constitute a waiver of such Lender's right to demand such compensation.

(d) If any Lender requests compensation under this Section 3.03, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another Applicable Lending Office for any Loan or Letter of Credit affected by such event; provided that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Applicable Lending Office(s) to suffer no material economic, legal or regulatory disadvantage; and provided, further that nothing in this Section 3.03(d) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.03(a), (b) or (c).

Section 3.04. Funding Losses. Promptly following written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits) actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of any Interest Period, relevant interest payment date or payment period, as applicable, for such Loan, if applicable (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.06,

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.05. Matters Applicable to All Requests for Compensation.

(a) Any Agent or any Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of demonstrable error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01, Section 3.03 or Section 3.04 the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; provided that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.03, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Term SOFR Loans from one Interest Period to another, or to convert Base Rate Loans into Term SOFR Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.05(c) shall be applicable);

provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Term SOFR Loan from one Interest Period to another, or to convert Base Rate Loans into Term SOFR Loans shall be suspended pursuant to Section 3.05(b) hereof, such Lender's Term SOFR Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Term SOFR Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, Section 3.03 or Section 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Term SOFR Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Term SOFR Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Term SOFR Loans shall be made or continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be converted into Term SOFR Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, Section 3.03 or Section 3.04 hereof that gave rise to the conversion of such Lender's Term SOFR Loans pursuant to this Section 3.05 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Term SOFR Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted into Term SOFR Loans, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Term SOFR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Term SOFR Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis and Interest Periods) in accordance with their respective principal amount of Commitments.

#### Section 3.06. Replacement of Lenders under Certain Circumstances.

(a) If at any time (i) any Lender requests reimbursement for amounts owing pursuant to Section 3.01 or Section 3.03 as a result of any condition described in such Sections and Lender has declined or is unable to designate a different lending office in accordance with Section 3.01(e) or any Lender ceases to make Term SOFR Loans as a result of any condition described in Section 3.02 or Section 3.03, (ii) any Lender becomes a Defaulting Lender, (iii) any Lender becomes a Non-Consenting Lender or (iv) any Lender becomes a Non-Extending Lender, then the Borrower may, on prior written notice to the Administrative Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement (or, with respect to clause (iii) and clause (iv) above, all of its rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver or amendment) to one or more Eligible Assignees for a purchase price equal to the principal amount of all of such Lender's outstanding Loans plus any accrued but unpaid interest thereon and accrued but unpaid fees for the account of such

Lender hereunder (provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and provided, further, that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender or a Non-Extending Lender, the applicable Eligible Assignees shall have agreed to the applicable extension, waiver or amendment of the Loan Documents).

(b) Any Lender being replaced pursuant to Section 3.06(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans and participations in L/C Obligations, as applicable (provided that the failure of any such Lender to execute an Assignment and Assumption shall not render such assignment invalid and such assignment shall be recorded in the Register) and (ii) deliver Notes, if any, evidencing such Loans to the Borrower or the Administrative Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitments and outstanding Loans and participations in L/C Obligations, as applicable, (B) all obligations of the Loan Parties owing to the assigning Lender relating to the Loan Documents and participations so assigned shall be paid in full by the assignee Lender or the Loan Parties (as applicable) to such assigning Lender concurrently with such assignment and assumption, any amounts owing to the assigning Lender (other than a Defaulting Lender) under Section 3.04 as a consequence of such assignment shall have been paid by the Borrower to the assigning Lender and (C) upon such payment and, if so requested by the assignee Lender, the assignor Lender shall deliver to the assignee Lender the appropriate Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender.

(c) Notwithstanding anything to the contrary contained above, any Lender that acts as an L/C Issuer may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer reasonably satisfactory to such L/C Issuer, or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to each such outstanding Letter of Credit and the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.09.

(d) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of all affected Lenders in accordance with the terms of Section 10.01 or all the Lenders of a certain Class and (iii) the Required Lenders, Required Revolving Credit Lenders or Required Initial Term Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "Non-Consenting Lender."

(e) Notwithstanding anything herein to the contrary, each party hereto agrees that any assignment pursuant to the terms of this Section 3.06 may be effected pursuant to an Assignment and

Assumption executed by the Borrower, the Administrative Agent and the assignee Lender and that the Lender making such assignment need not be a party thereto.

Section 3.07. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR or any Governmental Authority has imposed material restrictions on the authority of such Lender to engage in revert repurchase of U.S. Treasury securities transactions of the type included in the determination of SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or maintain Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be, in each case, suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall promptly, following written demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor if such Lender may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loans, and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR or Term SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR or Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, and all amounts due, if any, in connection with such prepayment or conversion under Section 3.04. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.08. Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder and any assignment of rights by or replacement of a Lender.

ARTICLE IV  
Conditions Precedent to Credit Extensions

Section 4.01. Conditions to Closing Date. This Agreement shall become effective upon the satisfaction of the following conditions precedent (or waiver thereof in accordance with Section 10.01):

(a) The Administrative Agent shall have received:

(i) a counterpart of this Agreement signed on behalf of the Borrower and each Lender party hereto;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) a counterpart of the Guaranty signed on behalf of each Loan Party;

(iv) a counterpart of the Security Agreement signed on behalf of each Loan Party;

(v) a counterpart of the Global Intercompany Note signed on behalf of each Loan Party and each other Subsidiary party thereto;

(vi) in respect of each Loan Party, a customary certificate, dated the Closing Date and executed by the secretary, assistant secretary or other Responsible Officer of such Loan Party, attaching and certifying (i) a copy of each Organization Document of such Loan Party, which shall, to the extent applicable, be certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority, (ii) resolutions of the board of directors or equivalent governing body of such Loan Party approving and authorizing the execution, delivery and performance of the Loan Documents to which such Loan Party is a party and the transactions contemplated hereby and thereby, (iii) a good standing certificate from the applicable Governmental Authority of such Loan Party's jurisdiction of organization, dated the Closing Date or a recent date prior thereto and (iv) signatures and incumbencies of the officers of such Loan Party executing the Loan Documents to which such Loan Party is a party, all in form and substance reasonably satisfactory to the Administrative Agent;

(vii) a certificate, dated the Closing Date and executed by a Responsible Officer of the Borrower, certifying that as of the Closing Date, after giving effect to the Transactions that are to occur on the Closing Date, (A) no Default has occurred and is continuing and (B) the representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document are true and correct in all material respects (or, with respect to any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language, in all respects);

(viii) a solvency certificate in the form attached hereto as Exhibit M; and



(ix) a customary legal opinion, dated the Closing Date and addressed to the Administrative Agent and the Lenders, from Wilson Sonsini Goodrich & Rosati, P.C., special counsel to the Loan Parties.

(b) Subject to the penultimate paragraph of this Section 4.01, the Collateral and Guarantee Requirement shall have been satisfied. The Administrative Agent shall have received a perfection certificate, dated the Closing Date and executed by a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent (the “Perfection Certificate”). The Administrative Agent shall have received, on or prior to the Closing Date, the results of a search of the Uniform Commercial Code filings made with respect to the Loan Parties in the jurisdictions contemplated by the Perfection Certificate and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are permitted under Section 7.01 or have been released.

(c) Subject to the penultimate paragraph of this Section 4.01, the Administrative Agent shall have received the insurance certificates and endorsements required pursuant to Section 6.06.

(d) The Borrower shall have paid to the Arrangers, the Administrative Agent and the Lenders all fees, expenses and other amounts due and payable on or prior to the Closing Date pursuant to the Loan Documents or separate agreements entered into by the Borrower and the Arrangers or the Administrative Agent (in the case of expenses and other amounts, solely to the extent invoiced at least one (1) Business Day prior to the Closing Date).

(e) The Administrative Agent and each requesting Lender shall have received, at least five Business Days prior to the Closing Date, (i) the documentation and other information reasonably requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the USA PATRIOT Act, and (ii) with respect to any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case to the extent requested at least eight Business Days prior to the Closing Date.

Notwithstanding the foregoing, solely with respect to the matters expressly identified on Schedule 6.12, the satisfaction by the Loan Parties of the foregoing conditions shall not be required on the Closing Date, but instead shall be required to be completed pursuant to Schedule 6.12.

The Administrative Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding.

Section 4.02. Conditions to Each Credit Extension. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Term SOFR Loans), and of any L/C Issuer to issue, amend, renew or extend any Letter of Credit, is subject to the following conditions precedent

(limited, in the case of Incremental Facilities which will be used to finance a Limited Condition Transaction, in the manner set forth in Section 2.14(e)):

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects (or, with respect to any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language, in all respects) on and as of the date of such Credit Extension (or, with respect to any representation and warranty that specifically refer to an earlier date, as of such earlier date).

(b) No Default shall have occurred and be continuing, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(c) The Administrative Agent and, if applicable, the relevant L/C Issuer, shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Term SOFR Loans) submitted by the Borrower shall (subject, in the case of a Request for Credit Extension delivered with respect to any Incremental Facility, subject to Section 2.14(e)) be deemed to be a representation and warranty that the applicable conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

#### ARTICLE V Representations and Warranties

The Borrower represents and warrants to the Agents and the Lenders on the Closing Date and on the date of each Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Term SOFR Loans) after the Closing Date as follows:

Section 5.01. Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each other Restricted Subsidiary (a) is a Person duly incorporated, organized or formed, and validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all applicable Laws (including the USA PATRIOT Act and anti-money laundering laws), writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (a) (other than with respect to any Loan Party), (b)(i), (c), (d) or (e), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.02. Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action on the part of each Loan Party and (b) do not and will not (i) contravene the terms of

any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or require any payment to be made under (A) any Contractual Obligation exceeding the Threshold Amount to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, (iii) result in the creation of any Lien (other than under the Loan Documents) or (iv) violate any applicable Law; except, in the case of clauses (b)(ii) and (b)(iv) above, to the extent that such conflict, breach, contravention, payment or violation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.03. Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required on the part of any Loan Party in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent, the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and to exercise rights and remedies, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect and (iii) those approvals, consents, exemptions, authorizations, other actions, notices or filings, the failure of which to obtain, take, give or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.04. Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law).

Section 5.05. Financial Statements; No Material Adverse Effect.

(a) The Audited Borrower Financial Statements were prepared in accordance with GAAP consistently applied throughout the periods covered thereby and fairly present in all material respects the consolidated financial condition of the Borrower and its Subsidiaries, in each case, as of the dates thereof and their results of operations for the period covered thereby.

(b) Since December 31, 2021, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06. Litigation. Except as set forth on Schedule 5.06 to the Disclosure Letter, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing or contemplated, at law, in equity, in arbitration or before any

Governmental Authority, by or against any Loan Party or any Restricted Subsidiary or against any of their properties or revenues that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07. Ownership of Property; Liens. Each Loan Party and each of its Restricted Subsidiaries has good and valid title to, or valid leasehold interests in, or easements or other limited property interests in, all property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes, Permitted Liens and any Liens and privileges arising mandatorily by Law and, in each case, except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.08. Environmental Matters. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) there are no pending or, to the knowledge of the Borrower, threatened (in writing) claims, actions, suits, notices of violation, notices of potential responsibility, disputes or proceedings by or involving any of the Loan Parties or any of their respective Subsidiaries alleging potential liability or responsibility for violation of, or otherwise relating to, any Environmental Law;

(b) (i) there is no asbestos or asbestos-containing material on any property currently owned, leased or operated by any of the Loan Parties or any of their respective Subsidiaries; and (ii) there has been no Release of Hazardous Materials at, on, under or from any location in a manner which would reasonably be expected to give rise to any Environmental Liability of or relating to any of the Loan Parties or any of their respective Subsidiaries;

(c) none of the Loan Parties or any of their respective Subsidiaries is undertaking, or has completed, either individually or together with other Persons, any investigation or response action relating to any actual or threatened Release of Hazardous Materials at any location, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law;

(d) all Hazardous Materials transported from any property currently or, to the knowledge of any of the Loan Parties or any of their respective Subsidiaries, formerly owned, leased or operated by any of the Loan Parties or any of their respective Subsidiaries for off-site disposal have been disposed of in compliance with all Environmental Laws;

(e) none of the Loan Parties nor any of their respective Subsidiaries is subject to or has contractually or by operation of Law assumed any Environmental Liability; and

(f) the Loan Parties and each of their respective Subsidiaries and their respective businesses, operations and properties are and have been in compliance with all Environmental Laws.

Section 5.09. Taxes. Each Loan Party and each Restricted Subsidiary has timely filed all federal, provincial, state, municipal, foreign and other Tax returns and reports required to be

filed, and have timely paid all federal, provincial, state, municipal, foreign and other Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP, and except for failures to make such filings or payments that could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. There are no Tax audits, deficiencies, assessments or other claims with respect to any Loan Party or any Restricted Subsidiary that could, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 5.10. Compliance with ERISA.

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal, state or other applicable Laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS, or can rely on an opinion letter from the IRS, to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto is exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Borrower, threatened (in writing) claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.11. Subsidiaries; Equity Interests. As of the Closing Date, neither the Borrower nor any other Loan Party has any Subsidiaries other than those specifically disclosed in Schedule 5.11 to the Disclosure Letter, and all of the outstanding Equity Interests in the Borrower and the Subsidiaries of the Borrower have been validly issued, are fully paid and, in the case of Equity Interests representing corporate interests, are nonassessable and, on the Closing Date, all Equity Interests owned directly or indirectly by the Borrower or any other Loan Party are owned free and clear of all Liens except for Permitted Liens. As of the Closing Date, Schedule 5.11 to the Disclosure Letter (a) sets forth the name and jurisdiction of organization or incorporation of each Subsidiary, (b) sets forth the ownership interest of the Borrower and each Subsidiary in each of their respective Subsidiaries, including the percentage of such ownership and (c) identifies each Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.12. Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U or Regulation X of the FRB.

(b) No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940, as amended.

Section 5.13. Disclosure. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party to any Agent, any Arranger or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not materially misleading as of the time such Information is furnished; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time of preparation, it being understood that (i) such projections relate to future events and are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower, (ii) no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and (iii) such differences may be material.

Section 5.14. Intellectual Property; Licenses, Etc. Each of the Loan Parties and the other Restricted Subsidiaries owns, licenses or possesses the right to use, all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, technology, software, know-how database rights, design rights and other intellectual property rights, including registrations and applications for registration thereof and all rights of priority thereto, and all rights to sue for any infringement, misappropriation or violation, and all income, royalties, damages and payments due or payable therefor (collectively, “IP Rights”) that are used in or reasonably necessary for the operation of their respective businesses as currently conducted, and, to the knowledge of the Borrower, without violation of the rights of any Person, except to the extent such violation or failure to own, license or possess, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any such IP Rights is pending or threatened in writing against any Loan Party or Subsidiary, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.15. Solvency. On the Closing Date after giving effect to the Transactions, Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.16. Collateral Documents. The Collateral Documents are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties legal, valid and enforceable Liens on and security interests in, the Collateral described therein and to the extent intended to be created

thereby, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law), and (a) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable Laws (which filings or recordings shall be made to the extent required by the Collateral and Guarantee Requirement or any Collateral Document) and (b) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by the Collateral and Guarantee Requirement or any Collateral Document), the Liens created by such Collateral Documents will constitute so far as possible under relevant Law fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral to the extent perfection can be obtained by filing financing statements or upon the taking of possession or control, in each case subject to no Liens other than Permitted Liens and subject to the Collateral and Guarantee Requirements.

Section 5.17. Use of Proceeds. The Borrower will use the proceeds of the Initial Term Loans solely to repurchase, repay, acquire or otherwise settle a portion of the Borrower's Convertible Notes and to pay related premiums, fees and expenses in connection therewith. The Borrower will use the proceeds of the Initial Revolving Credit Loans and the L/C Credit Extensions for working capital, capital expenditures and other lawful general corporate purposes.

Section 5.18. Sanctions Laws and Regulations and Anti-Corruption Laws.

(a) Each of the Borrower and its Subsidiaries is in compliance, in all material respects, with the Sanctions Laws and Regulations, the FCPA and other applicable anti-corruption Laws. No Borrowing or use of proceeds of any Borrowing or drawing under any Letter of Credit will violate or result in the violation of any Sanctions Laws and Regulations or anti-corruption Laws applicable to any party hereto.

(b) None of the Borrower or any Subsidiary or, to the knowledge of the Borrower, any director, manager, officer or employee of the Borrower or any of its Subsidiaries, in each case, is (i) a Person (or owned 50% or more by one or more Persons or under Control of a Person) on the list of "Specially Designated Nationals and Blocked Persons" or the target of the limitations or prohibitions under any Sanctions Laws and Regulations, or (ii) a Person located, organized or resident in a country or territory that is the subject of comprehensive sanctions under Sanctions Laws and Regulations (as of the Closing Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea, the Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria).

(c) No part of the proceeds of any Loan or Letter of Credit will be used for any improper payments, directly or, to the knowledge of the Borrower, indirectly, to any governmental official or employee, political party, official of a political party, candidate for political office, or any other Person in order to obtain, retain or direct business or obtain any improper advantage, in violation of the FCPA or any similar applicable Laws issued, administered or enforced by any Governmental Authority having jurisdiction over the Borrower.

ARTICLE VI  
Affirmative Covenants

From and after the Closing Date and until the Termination Date, the Borrower shall, and shall (except in the case of the covenants set forth in Section 6.01, Section 6.02 and Section 6.03) cause each Restricted Subsidiary to, and shall (in the case of the covenants set forth in Section 6.07) cause each Subsidiary to:

Section 6.01. Financial Statements. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) with respect to each fiscal year of the Borrower, beginning with the fiscal year ended December 31, 2022, within the later of (i) sixty (60) days after the end of each fiscal year of the Borrower and (ii) five (5) days after the time period specified by the SEC under the Exchange Act for annual reporting (or fifteen (15) days thereafter if the Borrower timely files a Form 12b-25 (or any successor form)), its audited consolidated balance sheet and related statements of operations, comprehensive income, stockholders' equity and cash flows as of the end of and for such fiscal year, setting forth in each case in comparative form the figures for (or, in the case of the balance sheet, as of the end of) the previous fiscal year, accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing (without a "going concern" or like qualification or exception (other than (x) an emphasis of matter to the extent such statement does not qualify such audit in any respect, (y) with respect to, or resulting from, the regularly scheduled maturity of the Loans hereunder or any other Indebtedness occurring within one year from the time such opinion is delivered or (z) a prospective default under any financial covenant)) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) beginning with the first fiscal quarter ending after the Closing Date, with respect to the first three (3) fiscal quarters of each fiscal year of the Borrower, within the later of (i) forty-five (45) days after the end of each such fiscal quarter, and (ii) five (5) days after the time period specified by the SEC under the Exchange Act for quarterly reporting (or five (5) days thereafter if the Borrower timely files a Form 12b-25 (or any successor form)), its consolidated balance sheet and related statements of operations, comprehensive income, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Responsible Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end adjustments and the absence of footnotes; and

(c) simultaneously with the delivery of each set of consolidated financial statements referred to in Section 6.01(a) and (b) above (i) the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if



any) from such consolidated financial statements and (ii) a customary management discussion and analysis of operating results.

Notwithstanding the foregoing, the obligations in clauses (a), (b) and (c)(ii) of this Section 6.01 may be satisfied with respect to financial information and management discussion and analysis of operating results of the Borrower and its Subsidiaries by furnishing the Borrower's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable, filed with the SEC.

Section 6.02. Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) Business Days after the date on which the financial statements referred to in Section 6.01(a) and (b) are delivered (or deemed delivered), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be;

(c) [reserved];

(d) together with each Compliance Certificate delivered pursuant to Section 6.02(a), (i) a Perfection Certificate Supplement as required by Section 3.03 of the Security Agreement or confirming that there have been no updates since the most recently delivered Perfection Certificate Supplement (or the Perfection Certificate, as the case may be), (ii) a description of each event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a prepayment under Section 2.05(b), (iii) a list of Subsidiaries that identifies each Subsidiary as a Material Subsidiary, Unrestricted Subsidiary or an Immaterial Subsidiary as of the last day of the period covered by such Compliance Certificate or a confirmation that there is no change in such information since the later of the Closing Date and the date of the last such list and (iv) such other information required by the Compliance Certificate; and

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Loan Party or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request (including, without limitation, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation (to the extent applicable)); provided that the Borrower will not be required to provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of the Borrower or any of its Subsidiaries or any of their respective customers or suppliers, (ii) in respect of which disclosure to the Administrative Agents or any Lender (or any of their respective representatives) is prohibited by applicable Law or (iii) the disclosure of which would waive or

impair any attorney-client privilege or violate any confidentiality obligations owed to any third party by the Borrower or any Subsidiary.

Documents required to be delivered pursuant to Sections 6.01(a), (b) and (c) or Sections 6.02(b) and (e) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on EDGAR or the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that upon written request by the Administrative Agent, the Borrower shall deliver electronic copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering electronic copies is given by the Administrative Agent. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of electronic copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, SyndTrak, ClearPar or a substantially similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (iv) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

Section 6.03. Notices.

(a) Promptly after a Responsible Officer of the Borrower obtains actual knowledge thereof, notify the Administrative Agent for prompt further distribution to each Lender:

(i) of the occurrence of any Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto;

(ii) of any litigation or governmental proceeding (including, without limitation, in connection with any Environmental Laws) pending against the Borrower or any of the Restricted Subsidiaries that could reasonably be expected to result in a Material Adverse Effect; and

(iii) of the occurrence of any ERISA Event or similar event which could reasonably be expected to have a Material Adverse Effect.

(b) At least five Business Days prior to any anticipated modification of the Initial Term Maturity Date or the Initial Revolving Credit Maturity Date pursuant to the applicable definition thereof, the Borrower shall provide written notice to the Administrative Agent of such anticipated modification.

Section 6.04. Maintenance of Existence. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization or incorporation and (b) take all reasonable action to maintain all rights (including IP Rights), privileges (including its good standing), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except in the case of clauses (a) (other than with respect to the Borrower) and (b), (i) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect or (ii) pursuant to a transaction permitted by Section 7.04 or Section 7.05.

Section 6.05. Maintenance of Properties. Except if the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice.

Section 6.06. Maintenance of Insurance. Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and its Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Subject to Section 6.12, each such insurance policy (excluding any business interruption insurance policy) maintained in the United States shall (a) in the case of each general liability (including excess and umbrella general liability) insurance policy, name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder and (b) in the case of each property or casualty insurance policy, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the lender's loss payee thereunder.

Section 6.07. Compliance with Laws.

(a) Comply in all respects with the requirements of all Laws and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or property (including without limitation Environmental Laws and ERISA, but excluding Sanctions Laws and Regulations and FCPA

and other applicable anti-corruption Laws), except if the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Comply in all material respects with Sanctions Laws and Regulations and FCPA and other applicable anti-corruption Laws.

Section 6.08. Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be, sufficient to prepare financial statements in conformity with GAAP consistently applied.

Section 6.09. Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties and to discuss its affairs, finances and accounts with its directors, managers, officers and independent public accountants, all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 6.09 and the Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; provided, further, that when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.09, none of the Borrower or any Restricted Subsidiary will be required to disclose or permit the inspection or discussion of any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 6.10. Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied. Without limiting the generality of the foregoing, within sixty (60) days (or such longer period as the Administrative Agent may agree in its reasonable discretion) after the formation or acquisition of any new direct or indirect Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party, the designation in accordance with Section 6.13 of any existing direct or indirect Subsidiary as a Restricted Subsidiary or any Excluded Subsidiary ceasing to be an Excluded Subsidiary (including following designation by the Borrower of any Subsidiary as a Guarantor pursuant to the definition of Guarantors), the Borrower shall:

(a) cause each such Restricted Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent, as applicable, a Guaranty Supplement, a Security

Agreement Supplement and such other joinders, supplements, agreements, certificates, opinions, instruments and other documents as are reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent or the Collateral Agent, as applicable, in connection with the satisfaction of the Collateral and Guarantee Requirement;

(b) cause each such Restricted Subsidiary to deliver, in each case to the extent applicable, (i) any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and (ii) instruments evidencing the Indebtedness held by such Restricted Subsidiary and required to be pledged pursuant to the Collateral Documents, indorsed in blank to the Collateral Agent; and

(c) take and cause such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary to take whatever action (including the recording of the filing of financing statements) may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens with the priority required by, and subject to, the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law).

Section 6.11. Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, in a manner consistent with the uses set forth in Section 5.17.

Section 6.12. Further Assurances and Post-Closing Covenants.

(a) Subject to the limitations set forth herein and in the other Loan Documents, promptly upon reasonable request by the Administrative Agent or the Collateral Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) subject to the limitations set forth in the Collateral and Guarantee Requirement, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of this Agreement and the Collateral Documents.

(b) Within the time periods specified on Schedule 6.12 hereto (as each may be extended by the Administrative Agent in its reasonable discretion), complete such undertakings as are set forth on Schedule 6.12 hereto.

Section 6.13. Designation of Subsidiaries.

(a) Subject to clauses (b) and (c) below, the Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary. The designation of any Restricted Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower's investment therein. The designation of any Unrestricted Subsidiary as a Restricted

Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

(b) The Borrower may not (i) designate any Restricted Subsidiary as an Unrestricted Subsidiary, or (ii) designate an Unrestricted Subsidiary as a Restricted Subsidiary, in each case unless, immediately after giving effect to such designation, no Event of Default shall have occurred or be continuing.

(c) (i) The Borrower may not designate a Restricted Subsidiary as an Unrestricted Subsidiary unless such Restricted Subsidiary does not own, or hold an exclusive license to, any IP Rights, in each case, that is material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, and (ii) the Borrower and its Restricted Subsidiaries shall not be permitted to transfer to any Unrestricted Subsidiary legal or beneficial ownership of, or an exclusive license to, any IP Rights, in each case, that is material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole; provided that the foregoing shall not be deemed or interpreted to restrict any exclusive licenses granted to such Unrestricted Subsidiary for a legitimate business purpose that is only exclusive with respect to a particular type or field (or types or fields) of usage or a certain territory or group of territories, in each case that does not effectively result in the transfer of beneficial ownership of such IP Rights.

Section 6.14. Payment of Taxes. The Borrower will pay and discharge, and will cause each of the Restricted Subsidiaries to pay and discharge, all Taxes imposed upon it or upon its income or profits, or upon any properties belonging to it, in each case on a timely basis, and all lawful claims which, if unpaid, may reasonably be expected to become a Lien upon any properties of the Borrower or any of the Restricted Subsidiaries not otherwise permitted under this Agreement; provided that neither the Borrower nor any of the Restricted Subsidiaries shall be required to pay any such Tax or claim which is being contested in good faith and by proper proceedings if (x) such Person has maintained adequate reserves with respect thereto in accordance with GAAP or (y) the failure to pay such Tax or claim would not reasonably be expected, individually or in the aggregate, to constitute a Material Adverse Effect.

Section 6.15. Nature of Business. The Borrower and its Restricted Subsidiaries will engage only in material lines of business the same as or substantially similar to those lines of business conducted by the Borrower and its Restricted Subsidiaries on the Closing Date or any business reasonably related, complementary or ancillary thereto.

## ARTICLE VII Negative Covenants

From and after the Closing Date and until the Termination Date, the Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to:

Section 7.01. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;

- (b) Liens existing on the Closing Date and, to the extent individually securing Indebtedness in excess of \$5,000,000, set forth on Schedule 7.01(b) to the Disclosure Letter;
- (c) Liens for Taxes (i) which are not overdue for a period of more than thirty (30) days or (ii) which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;
- (d) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business (other than a Lien imposed under Section 430(k) of the Code or Section 303(k) of ERISA) (i) which secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled (or, if filed, have been discharged or stayed) and no other action has been taken to enforce such Lien or (ii) which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;
- (e) (i) pledges, deposits or Liens arising as a matter of law in the ordinary course of business in connection with workers' compensation, payroll taxes, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary;
- (f) Liens incurred in the ordinary course of business to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations);
- (g) easements, rights-of-way, restrictions, covenants, conditions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property which, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;
- (h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);
- (i) Liens securing Indebtedness permitted under Section 7.03(f); provided that (i) such Liens attach concurrently with or within two hundred and seventy (270) days after the acquisition, construction, repair, replacement or improvement (as applicable) of the property subject to such Liens, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, replacements thereof and improvements, attachments, additions and accessions to such property and the proceeds and the products thereof and customary security deposits, and (iii) with respect to Capitalized Leases, such Liens do not at any

time extend to or cover any assets (except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to such Capitalized Leases; provided that individual financings of equipment provided by one lender may be cross-collateralized to other financings of equipment provided by such lender;

(j) leases, licenses, subleases or sublicenses and Liens on the property covered thereby, in each case, granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower or any Restricted Subsidiary, taken as a whole, or (ii) secure any Indebtedness;

(k) 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 in the ordinary course of business;

(l) Liens (i) of a collection bank (including those arising under Section 4.01-210 of the Uniform Commercial Code) on the items in the course of collection and (ii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set off) and which are within the general parameters customary in the banking industry;

(m) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.02(c), (j), (t) or (y) to be applied against the purchase price for such Investment and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(n) Liens in favor of the Borrower or a Restricted Subsidiary securing Indebtedness permitted under Section 7.03(e) (provided that, solely with respect to Indebtedness required to be Subordinated Debt under Section 7.03(e), such Lien shall be subordinated to the Liens on the Collateral securing the Obligations to the same extent);

(o) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.13), in each case after the Closing Date; provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than replacements thereof and improvements, attachments, additions and accessions to such property and the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Indebtedness secured thereby is permitted under Section 7.03;



(p) any interest or title of a lessor or sublessor under leases or subleases entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(q) Liens, if any, arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(r) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(s) Liens, if any, arising from precautionary Uniform Commercial Code financing statement filings;

(t) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(u) any zoning or similar Law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;

(v) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit issued for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(w) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (i) and (o) of this Section 7.01; provided that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien, described as collateral in the terms of the Indebtedness being Refinanced or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof; and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(y) Liens on property of a Non-Loan Party securing Indebtedness or other obligations of such Non-Loan Party;

(z) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(aa) Liens securing Indebtedness permitted pursuant to Section 7.03(t); provided that such Liens may be either a Lien on the Collateral that is *pari passu* with the Lien securing the Obligations (but may not be secured by any assets that are not Collateral) or a Lien ranking junior to the Lien on the Collateral securing the Obligations and, in any such case, the beneficiaries thereof (or an agent on their behalf) shall have entered into an Acceptable Intercreditor Agreement;

(bb) Liens securing Indebtedness permitted pursuant to Section 7.03(m);

(cc) other Liens securing Indebtedness or other obligations in an aggregate principal amount at any time outstanding not to exceed the greater of (x) \$112,500,000 and (y) 30% of LTM Consolidated EBITDA at the time of incurrence thereof;

(dd) Liens securing Indebtedness permitted pursuant to Section 7.03(w); provided that, to the extent such Liens are on the Collateral, such Liens may be either a Lien on the Collateral that is *pari passu* with the Lien securing the Obligations or a Lien ranking junior to the Lien on the Collateral securing the Obligations and, in any such case, the beneficiaries thereof (or an agent on their behalf) shall have entered into an Acceptable Intercreditor Agreement;

(ee) Liens securing Indebtedness permitted pursuant to Section 7.03(v); provided that (i) such Liens shall only secure the obligations secured on the date of the related Permitted Acquisition or other similar Investment and such Liens shall not extend to any other property of the Borrower and its Restricted Subsidiaries that is not after-acquired property of the relevant acquired entities contemplated to be secured by such Indebtedness on the date of assumption thereof (and for the avoidance of doubt, no such after-acquired property shall be property of the Borrower and its Restricted Subsidiaries in existence prior to such date of assumption) and (ii) to the extent such Liens are on the Collateral, the beneficiaries thereof (or an agent on their behalf) shall have entered into an Acceptable Intercreditor Agreement;

(ff) Liens securing Indebtedness permitted pursuant to Section 7.03(b) and (o);

(gg) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by Law;

(hh) Liens on Receivables Financing Assets arising in connection with a Permitted Receivables Financing; and

(ii) Liens on Excluded Accounts securing Indebtedness permitted by Section 7.03(b), (m) and (o); and

(jj) Liens on the Equity Interests of JV Entities securing financing arrangements for the benefit of the applicable JV Entity that are not otherwise prohibited under this Agreement.

With respect to any secured Indebtedness that was permitted to be secured at the time of the incurrence of such Indebtedness, the accrual of interest, fees and other obligations in respect thereof, the accretion of accreted value, the amortization of original issue discount and the payment of interest in

the form of additional secured Indebtedness shall not be deemed to be an incurrence of a Lien for purposes of this Section 7.01.

Section 7.02. Investments. Make any Investments, except:

- (a) Investments by the Borrower or a Restricted Subsidiary in assets that were Cash Equivalents when such Investment was made, and Investments made in accordance with the Borrower's investment policy as approved by the Borrower's board of directors from time to time;
- (b) loans or advances to officers, directors, managers, partners and employees of the Borrower or the Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation, customary fringe benefits and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of the Borrower and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount at any time outstanding not to exceed the greater of (x) \$7,500,000 and (y) 2.00% of LTM Consolidated EBITDA, determined as of the time such loan or advance is made;
- (c) asset purchases (including purchases of inventory, supplies and materials) and the licensing or contribution of IP Rights pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business;
- (d) Investments (i) by any Loan Party in any other Loan Party, (ii) by any Non-Loan Party in any Loan Party, (iii) by any Non-Loan Party in any other Non-Loan Party and (iv) by any Loan Party in any Non-Loan Party; provided that the aggregate amount of such Investments in Non-Loan Parties pursuant to the foregoing clause (iv) shall not exceed in an aggregate amount, as valued at cost at the time each such Investment is made, (A) the greater of (x) \$93,750,000 and (y) 25% of LTM Consolidated EBITDA (which cap shall not apply to any Investments received in respect of, or consisting of, (w) the transfer or contribution of Equity Interests in or Indebtedness of any Foreign Subsidiary to any other Foreign Subsidiary, (x) intercompany Investments made and liabilities incurred in the ordinary course of business in connection with cash management operations of the Borrower or any of its Restricted Subsidiaries and (y) intercompany loans, advances or Indebtedness having a term not exceeding 364 days), *plus* (B) an amount equal to any returns of capital or sale proceeds actually received in cash in respect of any such Investments (which amount shall not exceed the amount of such Investment valued at cost at the time such Investment was made);
- (e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;
- (f) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions and/or Restricted Payments permitted under Section 7.01, Section 7.03, Section 7.04, Section 7.05 and Section 7.06, respectively (other than, in each case, by reference to this Section 7.02(f));

(g) Investments existing on the Closing Date and any modification, replacement, renewal, reinvestment or extension of any such Investments; provided that the amount of any Investment permitted pursuant to this Section 7.02(g) is not increased from the amount of such Investment on the Closing Date except pursuant to the terms of such Investment as of the Closing Date or as otherwise permitted by this Section 7.02;

(h) Investments in Swap Contracts permitted under Section 7.03(g);

(i) promissory notes and other noncash consideration received in connection with Dispositions permitted by Section 7.05;

(j) any Acquisition, together with any Investments in Restricted Subsidiaries necessary to consummate a transaction otherwise permitted by this clause (j); provided that except in the case of a Limited Condition Transaction (in which case, compliance with this clause (j) shall be determined in accordance with Section 1.09(a)), (i) immediately before and immediately after giving Pro Forma Effect to any such Acquisition and related Investments, no Default shall have occurred and be continuing, (ii) after giving effect to any such Acquisition and related Investments, the Borrower shall be in compliance with the covenant in Section 6.15 and (iii) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such Acquisition shall become Collateral and (B) any such newly created or acquired Restricted Subsidiary (other than an Excluded Subsidiary) shall become a Guarantor, in each case in accordance with Section 6.10 (any Acquisition that meets the requirements set forth in this clause (j), a “Permitted Acquisition”), provided that the aggregate cash consideration funded by a Loan Party and allocable to all such Acquisitions of any Person that is not and will not become a Loan Party (as reasonably determined by the Borrower) shall not exceed the greater of (x) \$93,750,000 and (y) 25% of LTM Consolidated EBITDA;

(k) Investments in respect of the Borrower’s entry into (including any payments of premiums in connection therewith), and performance of obligations under, any Permitted Call Spread Transaction or any Permitted Forward Agreement;

(l) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(m) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy, insolvency or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(n) [reserved];

(o) advances of payroll payments to employees in the ordinary course of business;

(p) [reserved];

(q) Investments held by a Restricted Subsidiary acquired after the Closing Date or of a Person merged into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary in accordance with Section 7.04 after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(r) Guarantee Obligations of the Borrower or any Restricted Subsidiary in respect of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(s) Investments to the extent that payment for such Investments is made solely with Qualified Equity Interests (and cash in lieu of fractional shares);

(t) Investments in an aggregate amount, as valued at cost at the time each such Investment is made and including all related commitments for future Investments, not exceeding (i) the greater of (x) \$187,500,000 and (y) 50% of LTM Consolidated EBITDA, plus (ii) an amount equal to any returns of capital or sale proceeds actually received in cash in respect of any such Investments (which amount shall not exceed the amount of such Investment valued at cost at the time such Investment was made);

(u) Investments in JV Entities and Unrestricted Subsidiaries in an aggregate amount, as valued at cost at the time each such Investment is made and including all related commitments for future Investments, not exceeding (i) the greater of (x) \$56,250,000 and (y) 15% of LTM Consolidated EBITDA, plus (ii) an amount equal to any returns of capital or sale proceeds actually received in cash in respect of any such Investments (which amount shall not exceed the amount of such Investment valued at cost at the time such Investment was made);

(v) Investments in connection with a Permitted Receivables Financing;

(w) contributions to a “rabbi” trust for the benefit of employees or other grantor trust subject to claims of creditors in the case of a bankruptcy or insolvency of either the Borrower or any Restricted Subsidiary;

(a) Investments by an Unrestricted Subsidiary entered into prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary pursuant to the definition of “Unrestricted Subsidiary”; provided that such Investments were not incurred in contemplation of such redesignation;

(b) Investments; provided that, at the time of such Investment, (x) no Event of Default shall have occurred and be continuing and (y) the Total Net Leverage Ratio as of the last day of the most recently ended Test Period, after giving Pro Forma Effect to such Investment, is not greater than the Total Net Leverage Ratio that is 0.25 to 1.00 less than the maximum Total Net Leverage Ratio applicable under the TNLR Financial Covenant at such time (for the avoidance of doubt, after giving pro forma effect to the application of a Covenant Toggle, if applicable); and

(c) Investments resulting from transactions entered into in order to consummate a Permitted Tax Restructuring.

Section 7.03. Indebtedness. Create, incur or assume any Indebtedness, except:

(a) Indebtedness of the Borrower and any of its Subsidiaries under the Loan Documents;

(b) Indebtedness incurred or which may be deemed to exist pursuant to any Guarantees, performance, statutory or similar obligations (including in connection with workers' compensation) or obligations in respect of letters of credit, surety bonds, bank guarantees or similar instruments related thereto incurred in the ordinary course of business, or pursuant to any appeal obligation, appeal bond or letter of credit in respect of judgments that do not constitute an Event of Default under Section 8.01(h);

(c) (i) Surviving Indebtedness, that, to the extent is individually in excess of \$5,000,000, is listed on Schedule 7.03(c) to the Disclosure Letter, and (ii) any Permitted Refinancing Indebtedness in respect of any of the foregoing;

(d) Guarantee Obligations of the Borrower and its Restricted Subsidiaries in respect of Indebtedness of the Borrower or any Restricted Subsidiary otherwise permitted hereunder (except that Non-Loan Parties may not, by virtue of this Section 7.03(d), guarantee Indebtedness that such Non-Loan Parties could not otherwise incur under this Section 7.03); provided that, if the Indebtedness being guaranteed is subordinated to the Obligations, such Guarantee Obligation shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(e) Indebtedness of the Borrower or any Restricted Subsidiary owing to the Borrower or any other Restricted Subsidiary to the extent constituting an Investment permitted by Section 7.02; provided that all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be subordinated to the Obligations pursuant to the subordination provisions of the Global Intercompany Note or on terms at least as favorable to the Lenders as those set forth in the Global Intercompany Note;

(f) (i) Attributable Indebtedness and other Indebtedness financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets (provided that such Indebtedness is incurred concurrently with or within two hundred seventy (270) days after the applicable acquisition, construction, repair, replacement or improvement), (ii) Attributable Indebtedness arising out of Permitted Sale Leasebacks and (iii) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clauses (i) and (ii); provided that the aggregate principal amount of Indebtedness outstanding pursuant to this Section 7.03(f) does not exceed the greater of (x) \$112,500,000 and (y) 30% of LTM Consolidated EBITDA, determined at the time such Indebtedness is incurred;

(g) Indebtedness in respect of Swap Contracts (i) entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual or anticipated exposure (other than those in respect of shares of capital stock or other equity ownership interests of the Borrower or any

Subsidiary), (ii) entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary and (iii) entered into to hedge commodities, currencies, foreign exchange rates, general economic conditions, raw materials prices, revenue streams or business performance;

(h) [reserved];

(i) Indebtedness representing deferred compensation to employees of the Borrower and its Restricted Subsidiaries incurred in the ordinary course of business;

(j) any Indebtedness to current or former officers, directors, partners, managers, consultants and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by Section 7.06(f);

(k) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case to the extent constituting indemnification obligations or obligations in respect of deferred purchase price obligations, purchase price adjustments or other similar obligations (including earn-outs);

(l) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with Permitted Acquisitions or any other Investment expressly permitted hereunder;

(m) Cash Management Obligations and other Indebtedness in respect of corporate credit cards, netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements in each case incurred in the ordinary course;

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) Indebtedness supported by a Letter of Credit in a principal amount not to exceed the face amount of such Letter of Credit;

(r) (i) unsecured Indebtedness of the Borrower or any Restricted Subsidiary in an unlimited amount, so long as the Total Net Leverage Ratio (after giving Pro Forma Effect to such Indebtedness and the use of proceeds thereof but excluding the cash proceeds therefrom) as of the last day of the most recently ended Test Period is not greater than the Total Net Leverage Ratio that is 0.25 to 1.00 less than the maximum Total Net Leverage Ratio applicable under the TNL Financial Covenant at such time (provided that, with respect to all Indebtedness of this clause (r), (A) such Indebtedness shall not mature prior to the date that is ninety one (91) days after the Latest Maturity Date of any then outstanding Term Loans (but may have a springing maturity date consistent with the Initial Term Facility and the Initial Revolving Credit Facility) or have a Weighted Average Life to Maturity less than the longest remaining Weighted Average Life to Maturity of any then outstanding Term Loans plus ninety one (91) days; provided that the foregoing requirements of this clause (A) shall not apply to any Qualifying Bridge Facility, to customary mandatory prepayments upon asset sales, casualty events, excess cash flow, change of control or other similar event risk provisions or to customary change of control, fundamental change, make-whole fundamental change or other similar event risk provisions and, for the avoidance of doubt, provisions providing for settlement upon conversion of Permitted Convertible Indebtedness), (B) such Indebtedness shall not have mandatory prepayment, redemption or offer to purchase events more onerous than those applicable to any then outstanding Term Loans (other than (1) customary offers to repurchase required upon the consummation of an asset sale, change of control or other fundamental change or (2) provisions entitling holders of Permitted Convertible Indebtedness to convert or settle such Permitted Convertible Indebtedness for cash, Equity Interests, or a combination thereof (or other securities or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) on or prior to maturity); provided that the foregoing requirements of this clause (B) shall not apply to any Qualifying Bridge Facility, to customary mandatory prepayments upon asset sales, casualty events, excess cash flow, change of control or other similar event risk provisions or to customary change of control, fundamental change, make-whole fundamental change or other similar event risk provisions and, for the avoidance of doubt, provisions providing for settlement upon conversion of Permitted Convertible Indebtedness), (C) the other terms and conditions of such Indebtedness (excluding pricing and optional prepayment or redemption terms or other provisions applicable only to periods after the Latest Maturity Date) reflect market terms and conditions at the time of incurrence or issuance of such Indebtedness (as reasonably determined by the Borrower in good faith) and (D) the maximum aggregate principal amount of Indebtedness that may be incurred pursuant to this Section 7.03(r) by Non-Loan Parties shall not exceed the greater of (x) \$112,500,000 and (y) 30% of LTM Consolidated EBITDA at any one time outstanding); and (ii) any Permitted Refinancing of Indebtedness incurred under the foregoing clause (r)(i);

(s) Indebtedness incurred by a Non-Loan Party, and guarantees thereof by a Non-Loan Party, in an aggregate outstanding principal amount not to exceed (A) the greater of (x) \$75,000,000 and (y) 20% of LTM Consolidated EBITDA, determined at the time such Indebtedness is incurred plus (B) additional Indebtedness incurred from time to time pursuant to asset-based revolving facilities provided by commercial banks or similar financial institutions;



provided that (1) such Indebtedness is secured only by Liens on the current assets of Restricted Subsidiaries that are not Loan Parties (and not on the Collateral), (2) Loan Parties shall not Guarantee such Indebtedness unless such Guarantees would otherwise be permitted under Section 7.02, and (3) borrowings under such asset-based revolving facilities shall be subject to a borrowing base or similar advance rate criteria;

(t) (i) Indebtedness (in the form of senior secured, senior unsecured, senior subordinated, or subordinated notes or loans) incurred by the Borrower to the extent that the Borrower would have been permitted to incur such Indebtedness as an Incremental Facility pursuant to Section 2.14; provided that (A) upon the effectiveness of such Indebtedness, except in connection with a Limited Condition Transaction (in which case no Specified Event of Default shall have occurred and is continuing or would result therefrom), no Default has occurred and is continuing or shall result therefrom, (B) such Indebtedness shall not mature earlier than the Latest Maturity Date of any then outstanding Term Loans (but may have a springing maturity date consistent with the Initial Term Facility and the Initial Revolving Credit Facility); provided that the foregoing requirements of this clause (B) shall not apply to any Qualifying Bridge Facility, (C) as of the date of the incurrence of such Indebtedness, the Weighted Average Life to Maturity of such Indebtedness shall not be shorter than the longest remaining Weighted Average Life to Maturity of any then outstanding Term Loans; provided that the foregoing requirements of this clause (C) shall not apply to any Qualifying Bridge Facility, (D) no Restricted Subsidiary is a borrower or guarantor with respect to such Indebtedness unless such Restricted Subsidiary is a Subsidiary Guarantor which shall have previously or substantially concurrently guaranteed the Obligations, (E) if such Indebtedness is secured, it is not secured by any assets not securing the Obligations unless such assets substantially concurrently with such incurrence secure the Obligations and (F) the other terms and conditions of such Indebtedness (excluding pricing, optional prepayment or redemption terms or other provisions applicable only to periods after the Latest Maturity Date) reflect market terms on the date of incurrence or issuance of such Indebtedness (as reasonably determined by the Borrower in good faith) (such Indebtedness incurred pursuant to this clause (t) being referred to as “Incremental Equivalent Debt”) and (ii) any Permitted Refinancing of Indebtedness incurred under the foregoing clause (t)(i);

(u) additional Indebtedness in an aggregate outstanding principal amount not to exceed the greater of (x) \$150,000,000 and (y) 40% of LTM Consolidated EBITDA, determined at the time such Indebtedness is incurred;

(v) Indebtedness assumed in connection with, or existing at the time a Person is acquired pursuant to, a Permitted Acquisition or other similar Investment not prohibited hereunder and not created in contemplation thereof, so long as, if such Indebtedness is secured, any Liens securing such Indebtedness are permitted by Section 7.01(ee);

(w) (i) Indebtedness (in the form of senior secured, senior unsecured, senior subordinated, or subordinated notes or loans) incurred by the Borrower or any of its Restricted Subsidiaries to the extent that 100% of the Net Cash Proceeds therefrom are, immediately after the receipt thereof, applied solely to the prepayment of Term Loans in accordance with Section 2.05(b)(iii); provided that (A) such Indebtedness shall not mature earlier than the Maturity Date with respect to the relevant Class of Term Loans being refinanced (but may have a

springing maturity date consistent with the Initial Term Facility and the Initial Revolving Credit Facility), provided that the foregoing requirements of this clause (A) shall not apply to any Qualifying Bridge Facility, (B) as of the date of the incurrence of such Indebtedness, the Weighted Average Life to Maturity of such Indebtedness shall not be shorter than the remaining Weighted Average Life to Maturity of then-remaining Term Loans being refinanced, provided that the foregoing requirements of this clause (B) shall not apply to any Qualifying Bridge Facility, (C) no Restricted Subsidiary is a borrower or guarantor with respect to such Indebtedness unless such Restricted Subsidiary is a Subsidiary Guarantor which shall have previously or substantially concurrently guaranteed the Obligations, (D) if such Indebtedness is secured, it is not secured by any assets not securing the Obligations unless such assets substantially concurrently with such incurrence secure the Obligations, (E) the terms and conditions of such Indebtedness (excluding pricing and optional prepayment or redemption terms or covenants or other provisions applicable only to periods after the maturity date of the Term Loans being refinanced) reflect market terms and conditions on the date of incurrence or issuance of such Indebtedness, as reasonably determined by the Borrower in good faith, and such Indebtedness shall not participate in mandatory prepayments on a greater than pro rata basis with the Term Loans and (F) the Borrower has delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower, together with all relevant financial information reasonably requested by the Administrative Agent, including reasonably detailed calculations demonstrating compliance with clauses (A), (B), (C), (D) and (E) above and (ii) any Permitted Refinancing of Indebtedness incurred under the foregoing clause (w)(i);

(x) Indebtedness with respect to any Permitted Receivables Financing;

(y) [reserved];

(z) [reserved]; and

(aa) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (z) above.

For purposes of determining compliance with this Section 7.03, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (a) through (z) above, the Borrower may, in its sole discretion, classify and reclassify or later divide, classify or reclassify such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; provided that all Indebtedness outstanding under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (a) of this Section 7.03.

The accrual of interest, the accretion of accreted value, the amortization of original issue discount and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03.

Section 7.04. Fundamental Changes. Merge, amalgamate, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of

transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (provided that the resulting entity shall succeed as a matter of law to all of the Obligations of the Borrower), or (ii) any one or more other Restricted Subsidiaries (provided that when any Restricted Subsidiary that is a Loan Party is merging or amalgamating with another Restricted Subsidiary, a Loan Party shall be a continuing or surviving Person, as applicable, or the resulting entity shall succeed as a matter of law to all of the Obligations of such Loan Party (including, without limitation, as the Borrower, as applicable)) and (iii) in order to consummate a Permitted Tax Restructuring;

(b) (i) any Non-Loan Party may merge, amalgamate or consolidate with or into any other Non-Loan Party, (ii) (A) any Restricted Subsidiary may liquidate, dissolve or wind up, or (B) any Restricted Subsidiary may change its legal form, in each case, if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders and (iii) the Borrower may change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Subsidiaries, and the Administrative Agent reasonably determines it is not disadvantageous to the Lenders;

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Non-Loan Party in accordance with Section 7.02 and Section 7.03, respectively, as applicable;

(d) so long as no Default exists or would result therefrom, the Borrower may merge or amalgamate with any other Person (1) in a transaction in which the Borrower is the continuing or surviving entity of such transaction or (2) in a transaction in which such other Person is the surviving or continuing entity of such transaction (such person, the "Successor Borrower"); provided that, in the case of this clause (2), (i) such Successor Borrower is organized under the laws of the United States, any state thereof or the District of Columbia; (ii) such Successor Borrower shall assume the Obligations of the Borrower under the Loan Documents; (iii) each Guarantor shall have confirmed that its Guarantee shall apply to the Successor Borrower's obligations under the Loan Documents; (iv) each Guarantor shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Borrower's obligations under the Loan Documents; (v) [reserved]; (vi) the Borrower shall have delivered information reasonably requested in writing by the Administrative Agent (or any Lender through the Administrative Agent) reasonably required by regulatory authorities under "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and, to the extent required the Beneficial Ownership Regulation, a Beneficial Ownership Certification and (vii) the Borrower shall have delivered a certificate of a Responsible Officer certifying compliance with the foregoing;

(e) so long as no Default exists or would result therefrom, any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.02; provided that the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of its Subsidiaries that is a Restricted Subsidiary, shall have complied with the requirements of Section 6.10 within the time periods specified thereby;

(f) [reserved]; and

(g) so long as no Default exists or would result therefrom, a merger, amalgamation, dissolution, winding up, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05, may be effected.

Section 7.05. Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete, worn out or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of the Borrower and its Restricted Subsidiaries;

(b) Dispositions of inventory and immaterial assets in the ordinary course of business (including allowing any registrations or any applications for registration of any immaterial IP Rights to lapse or go abandoned in the ordinary course of business);

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased);

(d) Dispositions of property to the Borrower or a Restricted Subsidiary; provided that if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party, (ii) to the extent such transaction constitutes an Investment, such transaction is permitted under Section 7.02, or (iii) such Disposition shall consist of the transfer of Equity Interests in or Indebtedness of any Foreign Subsidiary to any other Foreign Subsidiary;

(e) Dispositions permitted by Section 7.02, Section 7.04 and Section 7.06 and Liens permitted by Section 7.01 (other than, in each case, by reference to this Section 7.05(e));

(f) Dispositions of cash and Cash Equivalents in a manner not otherwise prohibited by the Loan Documents;

(g) leases, subleases, licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(h) transfers of property subject to Casualty Events;

(i) Dispositions of Investments in JV Entities or non-Wholly Owned Restricted Subsidiaries; provided that no Dispositions may be made pursuant to this Section 7.05(i) to the extent such JV Entity or non-Wholly Owned Restricted Subsidiary was, prior to a previous Disposition of Equity Interests in such JV Entity or non-Wholly Owned Restricted Subsidiary made pursuant to another provision of Section 7.05, a Wholly Owned Restricted Subsidiary, and such Dispositions pursuant to such other provision of Section 7.05 and this Section 7.05(i) were part of a single Disposition or series of related Dispositions, other than to the extent required by, or made pursuant to, customary buy/sell arrangements between the partners of such JV Entity or shareholders of such non-Wholly Owned Restricted Subsidiary set forth in the shareholders agreements, joint venture agreements, organizational documents or similar binding agreements relating to such JV Entity or non-Wholly Owned Restricted Subsidiary;

(j) Dispositions of accounts receivable in the ordinary course of business in connection with the collection or compromise thereof or pursuant to factoring arrangements, in each case to the extent not constituting a receivables financing;

(k) the termination, unwinding or settlement of any Swap Contract, Permitted Call Spread Transaction or Permitted Forward Agreement;

(l) Permitted Sale Leasebacks;

(m) Dispositions not otherwise permitted pursuant to this Section 7.05; provided that (i) such Disposition shall be for fair market value as reasonably determined by the Borrower in good faith, (ii) with respect to any Dispositions with a fair market value greater than or equal to \$40,000,000, the Borrower or the applicable Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (provided, however, that for the purposes of this clause (m)(ii), the following shall be deemed to be cash: (A) the assumption by the transferee of Indebtedness or other liabilities contingent or otherwise of the Borrower or any of its Restricted Subsidiaries (other than Subordinated Debt) and the valid release of the Borrower or such Restricted Subsidiary, by all applicable creditors in writing, from all liability on such Indebtedness or other liability in connection with such Disposition, (B) securities, notes or other obligations received by the Borrower or any of its Restricted Subsidiaries from the transferee that are converted by the Borrower or any of its Restricted Subsidiaries into cash or Cash Equivalents within 180 days following the closing of such Disposition, (C) Indebtedness (other than Subordinated Debt) of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Disposition, to the extent that the Borrower and each other Restricted Subsidiary are released from any Guarantee Obligation with respect to such Indebtedness in connection with such Disposition and (D) the aggregate Designated Non-Cash Consideration received by the Borrower and its Restricted Subsidiaries for all Dispositions under this clause (m) having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such Designated Non-Cash Consideration is received) not to exceed the greater of (x) \$75,000,000 and (y) 20% of LTM Consolidated EBITDA at any time outstanding (net of any Designated Non-Cash Consideration converted into cash and Cash Equivalents received in respect of any such Designated Non-Cash Consideration)) and (iii) the Borrower or the applicable Restricted Subsidiary complies with the applicable provisions of Section 2.05;

(n) the Borrower and its Restricted Subsidiaries may surrender or waive contractual rights and settle or waive contractual or litigation claims in the ordinary course of business;

(o) Dispositions of non-core or obsolete assets acquired in connection with Permitted Acquisitions or other Investments or Dispositions required to obtain regulatory approval;

(p) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater fair market value of usefulness to the business of the Borrower and its Restricted Subsidiaries as a whole, as determined in good faith by the Borrower;

(q) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary so long as the primary assets of such Unrestricted Subsidiary are not cash or Cash Equivalents;

(r) Dispositions consummated in connection with a Permitted Tax Restructuring;

(s) Dispositions for cash or Cash Equivalents (other than in connection with the capitalization of any special purpose entity used to effect any such Permitted Receivables Financing) of Receivables Financing Assets in connection with any Permitted Receivables Financing; and

(t) additional Dispositions in an aggregate amount not to exceed \$100,000,000 during the term of this Agreement.

To the extent any Collateral is disposed of as expressly permitted by this Section 7.05 to any Person other than the Borrower or any Subsidiary Guarantor, such Collateral shall be sold free and clear of the Liens created by the Loan Documents and, upon the certification by the Borrower that such Disposition is permitted by this Agreement (if requested by the Administrative Agent), the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take and shall take any actions deemed appropriate in order to effect the foregoing.

Section 7.06. Restricted Payments. Declare or make any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower and to other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-Wholly Owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) (i) the Borrower may redeem in whole or in part any of its Equity Interests for another class of its Equity Interests or rights to acquire its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests, provided that any terms and provisions material to the interests of the Lenders, when taken as a whole, contained in such other class of Equity Interests are at least as advantageous to the Lenders as those contained in the Equity Interests redeemed thereby and (ii) the Borrower may declare and make dividend payments or other distributions payable solely in Qualified Equity Interests;

(c) [reserved];

(d) to the extent constituting Restricted Payments, the Borrower and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.02, Section 7.04 or Section 7.07 (other than, in each case, by reference to this Section 7.06(d));

(e) repurchases of Equity Interests in the ordinary course of business in the Borrower or any Restricted Subsidiary 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;

(f) the Borrower or any Restricted Subsidiary may, in good faith, pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of it held by any future, present or former employee, director, manager, officer or consultant (or any Affiliates, spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of the Borrower or any of its Subsidiaries pursuant to any employee, management, director or manager equity plan, employee, management, director or manager stock option plan or any other employee, management, director or manager benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, manager, officer or consultant of the Borrower or any Subsidiary, including withholding and similar Taxes related to such payments; provided that such payments do not exceed \$20,000,000 in any calendar year (with unused amounts in any calendar year being carried over to the succeeding calendar years so long as the aggregate amount of all Restricted Payments made pursuant to this Section 7.06(f) in any calendar year (after giving effect to such carry-forward) shall not exceed \$40,000,000);

(g) [reserved];

(h) the Borrower or any Restricted Subsidiary may pay any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement (it being understood that a distribution pursuant to this Section 7.06(h) shall be deemed to have utilized capacity under such other provision of this Agreement);

(i) the Borrower or any Restricted Subsidiary may (i) pay cash in lieu of issuing fractional Equity Interests and (ii) perform its obligations under convertible Indebtedness, including without limitation Permitted Convertible Indebtedness;

(j) the Borrower or any Restricted Subsidiary may make additional Restricted Payments in an amount not to exceed \$35,000,000 in the aggregate;

(k) [reserved];

(l) [reserved];

(m) the distribution, by dividend or otherwise, of Equity Interests or Indebtedness owed to the Borrower or a Restricted Subsidiary of an Unrestricted Subsidiary (or a Restricted

Subsidiary that owns an Unrestricted Subsidiary; provided that such Restricted Subsidiary has no independent operations or business and owns no assets other than Equity Interests of an Unrestricted Subsidiary), in each case, so long as the primary assets of such Unrestricted Subsidiary are not cash or Cash Equivalents;

(n) the Borrower or any Restricted Subsidiary may make additional Restricted Payments; provided that, at the time of such Restricted Payment, (i) no Event of Default has occurred and is continuing and (ii) the Total Net Leverage Ratio as of the last day of the most recently ended Test Period, after giving Pro Forma Effect to such Restricted Payment, is not greater than (A) on any date of determination prior to December 31, 2023, the Total Net Leverage Ratio that is 0.50 to 1.00 less than the maximum Total Net Leverage Ratio applicable under the TNLR Financial Covenant at such time and (B) on any date of determination on or after December 31, 2023, the Total Net Leverage Ratio that is 0.25 to 1.00 less than the maximum Total Net Leverage Ratio applicable under the TNLR Financial Covenant at such time; and

(o) the Borrower may make Restricted Payments in an amount not to exceed \$175,000,000 in any calendar year to repurchase common Equity Interests of the Borrower solely to the extent necessary to offset dilution of the Borrower's common Equity Interests resulting from Equity Interests issued or granted to channel partners and contractors or in connection with director or employee compensation or benefit plans (including as a result of vesting).

Section 7.07. Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower with a fair market value in excess of \$16,500,000, whether or not in the ordinary course of business, other than:

(a) transactions between or among the Borrower or any Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transaction;

(b) transactions on terms not less favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate;

(c) equity issuances or any Restricted Payments permitted under Section 7.06;

(d) loans and other transactions by and among the Borrower and/or one or more Subsidiaries to the extent not prohibited by this Article VII;

(e) employment and severance arrangements between the Borrower or any of its Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements;

(f) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Borrower and its Restricted Subsidiaries in the ordinary course of business;



(g) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.07 to the Disclosure Letter, or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(h) transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary pursuant to the definition of "Unrestricted Subsidiary"; provided that such transactions were not entered into in contemplation of such redesignation; and

(i) transactions in connection with Permitted Tax Restructurings.

Section 7.08. Prepayments, Etc., of Indebtedness.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to one year before the scheduled maturity thereof in any manner any Subordinated Debt (it being understood that payments of regularly scheduled interest, AHYDO payments and mandatory prepayments under any such Subordinated Debt Documents shall not be prohibited by this clause), except for (i) the refinancing thereof with, or the exchange thereof for, any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing), (ii) the conversion thereof to Equity Interests (other than Disqualified Equity Interests) of the Borrower and payments of cash in lieu of fractional shares, (iii) prepayments, redemptions, purchases, defeasances and other payments thereof prior to their scheduled maturity in an aggregate amount not to exceed \$35,000,000 in the aggregate and (iv) other prepayments, redemptions, purchases, defeasances and other payments with respect thereof prior to their scheduled maturity (provided that, at the time of any such prepayment, redemption, purchase, defeasance or other payment, (x) no Specified Event of Default has occurred and is continuing or would result therefrom and (y) the Total Net Leverage Ratio as of the last day of the most recently ended Test Period, after giving Pro Forma Effect to such prepayment, redemption, purchase, defeasance or other payment, is not greater than the Total Net Leverage Ratio that is 0.50 to 1.00 less than the maximum Total Net Leverage Ratio applicable under the TNL Financial Covenant at such time).

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any Subordinated Debt Documents without the consent of the Required Lenders (not to be unreasonably withheld, conditioned or delayed).

Section 7.09. [Reserved]

Section 7.10. Subsidiary Distributions. Enter into any agreement, instrument, deed or lease which prohibits or limits the ability of any Restricted Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests; provided that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (i) applicable Law or (ii) any Loan Document;

(b) restrictions and conditions existing on the Closing Date or to any extension, renewal, amendment, modification or replacement thereof, except to the extent any such extension, renewal, amendment, modification or replacement expands the scope of any such restriction or condition;

- (c) customary restrictions and conditions arising in connection with any Disposition permitted by Section 7.05;
- (d) customary provisions in leases, licenses and other contracts restricting the assignment thereof;
- (e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing such Indebtedness;
- (f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition), provided that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to the Borrower or any other Restricted Subsidiary (other than Subsidiaries of the Person so acquired);
- (g) any restrictions or conditions in any Indebtedness permitted pursuant to Section 7.03 or by the definitions of “Refinancing Term Loans” and “Refinancing Revolving Commitments” hereof to the extent such restrictions or conditions are no more restrictive than the restrictions and conditions in the Loan Documents, taken as a whole, or, in the case of Subordinated Debt, are market terms at the time of issuance (as determined in good faith by the Borrower) or, in the case of Indebtedness of any Non-Loan Party, are imposed solely on such Non-Loan Party and its Subsidiaries;
- (h) any restrictions on cash or other deposits imposed by agreements entered into in the ordinary course of business;
- (i) customary provisions in shareholders agreements, joint venture agreements, organizational documents or similar binding agreements relating to any JV Entity or non-Wholly Owned Restricted Subsidiary and other similar agreements applicable to JV Entities and non-Wholly Owned Restricted Subsidiaries permitted under Section 7.02 and applicable solely to such JV Entity or non-Wholly Owned Restricted Subsidiary and the Equity Interests issued thereby;
- (j) customary restrictions in leases, subleases, licenses or asset sale agreements and other similar contracts otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto;
- (k) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;
- (l) customary net worth provisions contained in real property leases entered into by Subsidiaries of the Borrower, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligation; and

(m) restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 7.03 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type, so long as the Borrower shall have determined in good faith that such restrictions will not adversely affect in any material respect its obligation or ability to make any payments required hereunder.

Section 7.11. Maximum Total Net Leverage Ratio.

(a) Subject to clause (b) of this Section 7.11, the Borrower shall maintain, as of the last day of each fiscal quarter of the Borrower ending after the Closing Date, a Total Net Leverage Ratio for the Test Period ending on such day of not more than 4.75 to 1.00, stepping down to (i) 4.25 to 1.00 beginning with the fiscal quarter ending December 31, 2023 and (ii) 4.00 to 1.00 beginning with the fiscal quarter ending December 31, 2024.

(b) Upon the consummation of a Material Acquisition, the Borrower may elect, with respect to the fiscal quarter in which such Material Acquisition is consummated and for each of the following three consecutive fiscal quarters, to increase the maximum Total Net Leverage Ratio permitted under clause (a) of this Section 7.11 with respect to each such fiscal quarter by 0.25 to 1.00 (a “Covenant Toggle”), provided that (x) the Borrower may not elect to utilize a Covenant Toggle if a Covenant Toggle has been elected to be used by the Borrower with respect to any of the two fiscal quarters immediately prior to the proposed effectiveness of such election and (y) the maximum Total Net Leverage Ratio permitted with respect to any fiscal quarter after giving effect to a Covenant Toggle shall not exceed 4.50 to 1.00.

Section 7.12. Minimum Interest Coverage Ratio. The Borrower shall maintain, as of the last day of each fiscal quarter of the Borrower ending after the Closing Date, an Interest Coverage Ratio that is not less than 3.50 to 1.00.

ARTICLE VIII  
Events of Default and Remedies

Section 8.01. Events of Default. Any of the following events referred to in any of clauses (a) through (j), inclusive of this Section 8.01 shall constitute an “Event of Default”:

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a)(i) or Section 6.04 (solely with respect to the Borrower) or Article VII; provided that an Event of Default arising from a failure to comply with Section 6.03(a)(i) shall be deemed to be no longer continuing automatically upon and simultaneously with the underlying Default ceasing to be continuing so long as the Borrower has provided notice to the Administrative Agent promptly after a Responsible Officer of the Borrower obtains knowledge of such underlying Default; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof by the Administrative Agent or the Required Lenders; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made and such incorrect or misleading representation, warranty, certification or statement of fact, if capable of being cured, remains so incorrect or misleading for thirty (30) days after receipt by the Borrower of written notice thereof by the Administrative Agent or the Required Lenders; or

(e) Cross-Default. Any Loan Party or any Restricted Subsidiary (i) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate principal amount exceeding the Threshold Amount or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than any event requiring prepayment pursuant to customary asset sale events, insurance and condemnation proceeds events, change of control events and excess cash flow and indebtedness sweeps), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, all such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem all such Indebtedness to be made, prior to its stated maturity; provided that this clause (e)(ii) shall not apply to (A) secured Indebtedness that becomes due (or requires an offer to purchase) as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness, (B) any repurchase, prepayment, defeasance, redemption, conversion or settlement with respect to any Permitted Convertible Indebtedness, including the Convertible Notes or any Permitted Refinancing Indebtedness in respect thereof, or satisfaction of any condition giving rise to or permitting the foregoing, pursuant to its terms unless such repurchase, prepayment, defeasance, redemption, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (C) any early payment requirement or unwinding or termination with respect to any Swap Contract, Permitted Call Spread Transaction or Permitted Forward Agreement or satisfaction of any condition giving rise to or permitting the foregoing, in accordance with the terms thereof where neither the Borrower nor any of its Subsidiaries is the “defaulting party” (or substantially equivalent term) under the terms of such Swap Agreement, Permitted Call Spread Transaction or Permitted Forward Agreement; provided, further, that (x) such failure or breach is unremedied and is not waived by the required holders of such Indebtedness and (y) for the avoidance of doubt, any event or condition set forth under this clause (e) shall not, until the expiration of any applicable grace period or the delivery of notice by the applicable holder or holders of such Indebtedness, constitute an Event of Default for purposes of this Agreement; or

(f) Insolvency Proceedings, Etc. Except with respect to any dissolution or liquidation of a Restricted Subsidiary expressly permitted by Section 7.04, any Loan Party or any of the Restricted Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, interim receiver, receiver and manager, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, interim receiver, receiver and manager, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days; or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Restricted Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Loan Parties, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) Invalidity of Collateral Documents. Any material provision of any Collateral Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or Section 7.05) or solely as a result of (x) acts or omissions of the Collateral Agent in respect of certificates, promissory notes or instruments actually delivered to it or as a result of the Collateral Agent's failure to make necessary filings, including UCC financing statements, UCC continuation statements and intellectual property filings, or (y) the occurrence of the Termination Date, ceases to be in full force and effect or ceases to create a valid and perfected lien, with the priority set forth in the Collateral and Guarantee Requirement, on a material portion of the Collateral covered thereby; or any Loan Party contests in writing the validity or enforceability of any material provision of any Collateral Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Collateral Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Collateral Document; or

(j) Invalidity of Guarantees. Any Guarantee, after its execution and delivery, provided by the Borrower or any other Guarantor that is a Material Subsidiary, or any material provision thereof, ceases to be in full force and effect (other than pursuant to the terms hereof or thereof) or any Loan Party denies or disaffirms in writing any such Guarantor's obligations under its Guarantee (other than upon the occurrence of the Termination Date); or

(k) Change of Control. There occurs any Change of Control; or

(l) ERISA. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02. Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an Event of Default under Section 8.01(f) or (g) with respect to the Borrower, the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03. Exclusion of Immaterial Subsidiaries. Solely for the purpose of determining whether a Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary shall be deemed not to include any Subsidiary that is an Immaterial Subsidiary or at such time could, upon designation by the Borrower, become an Immaterial Subsidiary in compliance with this Agreement, unless the portion of LTM Consolidated EBITDA attributable to such Subsidiary, together with the LTM Consolidated EBITDA attributable to all other Subsidiaries affected by such event or circumstance referred to in such clause, shall exceed 10 % of LTM Consolidated EBITDA.

Section 8.04. Application of Funds. If the circumstances described in Section 2.12(g) have occurred, or after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have

automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), including in any bankruptcy or insolvency proceeding, any amounts received on account of the Obligations shall be applied by the Administrative Agent, subject to any applicable intercreditor agreement entered into by the Agents pursuant to this Agreement that is then in effect, in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, Cash Management Obligations, and obligations under Secured Hedge Agreements, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to each Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, Cash Management Obligations and obligations under Secured Hedge Agreements) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest (including, but not limited to, post-petition interest), ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, Unreimbursed Amounts, face amounts of the L/C Borrowings, Obligations under Secured Hedge Agreements and Cash Management Obligations, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, returned to the Borrower.

ARTICLE IX  
Administrative Agent and Collateral Agent

Section 9.01. Appointment and Authorization of Agents.

(a) Each Lender and L/C Issuer hereby irrevocably appoints, designates and authorizes each Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, each Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall any Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against such Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each such L/C Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “Agent” as used in this Article IX and in the definition of “Agent-Related Persons” included such L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such L/C Issuer.

(c) Each of the Lenders (in its capacities as a Lender, L/C Issuer (if applicable) and a potential Hedge Bank or Cash Management Bank) hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent of (and to hold any security interest, charge or other Lien created by the Collateral Documents for and on behalf of or on trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the “Collateral Agent” under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Agents to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of the Loan Documents and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.



Section 9.02. Delegation of Duties. Each Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through Affiliates, agents, employees or attorneys-in-fact, such sub-agents as shall be deemed necessary by such Agent, and shall be entitled to advice of counsel, both internal and external, and other consultants or experts concerning all matters pertaining to such duties. Each Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

Section 9.03. Liability of Agents. No Agent-Related Person or Arranger shall (a) be liable to any Lender for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby, including their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent or Arranger (except for its own gross negligence or willful misconduct, as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), (b) be responsible in any manner to any Lender or participant for or have any duty to ascertain or inquire into any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by any Arranger or Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, the value or sufficiency of any Collateral or the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the applicable Agent, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder or (c) be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders; further, without limiting the generality of the foregoing clause (c), no Agent-Related Person or Arranger shall (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender. No Agent-Related Person or Arranger shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof. No Agent or Arranger shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that an Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that such Agent shall not be required to take any action that, in its judgment or the judgment of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. No Agent or Arranger shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for

herein or in the other Loan Documents), or in the absence of its own gross negligence or willful misconduct, as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein.

Section 9.04. Reliance by Agents.

(a) Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, request, consent, certificate, instrument, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by such Agent and shall not incur any liability for relying thereon. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. Subject to the other provisions of this Article IX, the Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders in accordance with Article VIII; provided that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.06. Credit Decision; Disclosure of Information by Agents. Each Lender acknowledges that no Agent-Related Person or Arranger has made any representation or warranty to it, and that no act by any Agent or Arranger hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person or Arranger to any Lender as to any matter, including whether Agent-Related Persons or Arrangers have disclosed material information in

their possession. Each Lender represents to each Agent and Arranger that it has, independently and without reliance upon any Agent-Related Person or Arranger and based on such documents and information as it has deemed appropriate, made its own appraisal of an investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person or Arranger and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, none of the Agents or Arrangers shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person or Arranger.

Section 9.07. Indemnification of Agents. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it in its capacity as an Agent-Related Person; provided that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final and non-appealable judgment of a court of competent jurisdiction; provided that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrower, provided that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, if any. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of any Agent.

Section 9.08. Agents in Their Individual Capacities. Bank of America and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though Bank of America

were not the Administrative Agent and Collateral Agent hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding any Loan Party or any Affiliate of a Loan Party (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Agents shall be under no obligation to provide such information to them. With respect to its Loans, Bank of America shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent and Collateral Agent, and the terms “Lender” and “Lenders” include Bank of America in its individual capacity.

Section 9.09. Successor Agents. Any Agent may resign upon thirty (30) days’ notice to the Lenders and the Borrower. If an Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which appointment of a successor agent shall require the consent of the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) or (g), (which consent of the Borrower shall not be unreasonably withheld, conditioned or delayed). If, at the time that an Agent’s resignation is effective, it is acting as an L/C Issuer, such resignation shall also operate to effectuate its resignation as L/C Issuer, and it shall automatically be relieved of any further obligation to issue Letters of Credit. If no successor agent is appointed prior to the effective date of the resignation of an Agent, such Agent may appoint, after consulting with the Lenders and the Borrower, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Agent, and (x) the term “Administrative Agent” shall mean such successor administrative agent and (y) the term “Collateral Agent” shall mean such successor collateral agent), and the retiring Agent’s appointment, powers and duties hereunder shall be terminated. After the retiring Agent’s resignation hereunder, the provisions of this Article IX and Section 10.04 and Section 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement. If no successor agent has accepted appointment as the Administrative Agent or Collateral Agent, as applicable, by the date which is thirty (30) days following the retiring Agent’s notice of resignation, the retiring Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent or Collateral Agent, as applicable, hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed). Upon the acceptance of any appointment as the Administrative Agent or Collateral Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to other instruments or notices, as may be necessary or desirable, or as the Required Lenders may reasonably request, in order to (a) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (b) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, the successor Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Agent, and the retiring Agent shall, to the extent not previously discharged, be discharged from its duties and obligations under the Loan Documents.

Section 9.10. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement,

adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or any L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Section 2.09 and Section 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(c) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due to the Agents under Section 2.09 and Section 10.04.

The Secured Parties hereby irrevocably authorize each of the Administrative Agent and the Collateral Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) an Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) each Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by an Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required

Lenders contained in clauses (a) through (g) of Section 10.01, (iii) each Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Nothing contained herein shall be deemed to authorize any Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize any Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.11. Collateral and Guaranty Matters. The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by any Agent under any Loan Document shall be automatically released (i) on the Termination Date, (ii) at the time the property subject to such Lien is transferred as part of or in connection with any transfer permitted hereunder or under any other Loan Document to any Person other than any other Loan Party, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below or (v) if the property subject to such Lien becomes Excluded Property;

(b) each Agent is authorized and directed to release or subordinate any Lien on any property granted to or held by such Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(i) and (o); and

(c) if any Subsidiary Guarantor ceases to be a Restricted Subsidiary, or becomes an Excluded Subsidiary, in each case, as a result of a transaction or designation permitted hereunder (as certified in writing delivered to the Administrative Agent by a Responsible Officer of the Borrower), (x) such Subsidiary shall be automatically released from its obligations under the Guaranty and (y) any Liens granted by such Subsidiary or Liens on the Equity Interests of such Subsidiary (to the extent such Equity Interests have become Excluded Property or are being transferred to a Person that is not a Loan Party) shall be automatically released; provided that if such Subsidiary Guarantor becomes an Excluded Subsidiary as a result of clause (g) of the definition thereof, such Person shall only be released under the Guaranty to the extent that (i) such Guarantor ceased to be a Wholly Owned Subsidiary as a result of a joint venture or other strategic transaction permitted hereunder; provided that the primary purpose of such transaction was not to evade the Guarantee required hereunder, (ii) the transaction by which such Guarantor ceases to be a Wholly Owned Restricted Subsidiary was consummated on an arm's-length basis

with an unaffiliated third-party or (iii) after giving effect to the transaction, the Guarantor being released from its Guarantee Obligations is no longer a direct or indirect Restricted Subsidiary of the Borrower.

Upon request by an Agent at any time, the Required Lenders will confirm in writing such Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.11; provided that a failure to obtain such confirmation will not prevent any release otherwise permitted. In each case as specified in this Section 9.11, the applicable Agent will promptly (and each Lender irrevocably authorizes and directs each Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.11. Prior to releasing or subordinating its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.11, the applicable Agent shall be entitled to receive a certificate of a Responsible Officer of the Borrower stating that such actions are permitted under this Agreement. Neither the Administrative Agent nor the Collateral Agent shall be liable for any such release undertaken in reliance upon any such certificate of a Responsible Officer of the Borrower.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.11 or in any of the Collateral Documents.

Section 9.12. Other Agents; Arrangers and Managers. None of the Lenders, the Agents, the Arrangers or other Persons identified on the facing page or signature pages of this Agreement as a "joint lead arranger and bookrunner", "co-syndication agent" or "documentation agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.13. Appointment of Supplemental Administrative Agents.

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or

necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “Supplemental Administrative Agent” and, collectively, as “Supplemental Administrative Agents”).

(b) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Section 10.04 and Section 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or such Supplemental Administrative Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

Section 9.14. Withholding Tax. To the extent required by any applicable Law, the Administrative Agent may deduct or withhold from any payment to any Lender under any Loan Document an amount equivalent to any applicable withholding Tax.

Section 9.15. Cash Management Obligations; Secured Hedge Agreements. Except as otherwise expressly set forth herein, the Guaranty or in any other Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.04, any Guarantee or any Collateral by virtue of the provisions hereof or of the Guaranty or other Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender or an Agent and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Cash Management Obligations or Obligations arising under Secured Hedge Agreements unless the Administrative Agent has received written notice of



such Obligations, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank.

Section 9.16. Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or any L/C Issuer (the “Lender Recipient Party”), whether or not in respect of an Obligation due and owing by the Borrower at such time, which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “Rescindable Amount”): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. Each Lender Recipient Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount. For the avoidance of doubt, no Loan Party nor any of their respective Affiliates shall have any obligations or liabilities directly or indirectly arising out of this Section 9.16 in respect of any Rescindable Amount.

ARTICLE X  
Miscellaneous

Section 10.01. Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Borrower or the applicable Loan Party, as the case may be, the Required Lenders and the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or Section 2.08, fees or other amounts without the written consent of each Lender directly and adversely affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Term Loans (or any definitions related thereto) shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, any L/C Borrowing or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby, it being understood that any change to the definition of “Total Net Leverage Ratio” or in the component definitions thereof shall not constitute a reduction in the rate of interest or fees; provided that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01, change any provision of Section 2.13 that would alter the pro rata sharing of payments or change the payment waterfall provisions of Section 2.16(c) or Section 8.04, in each case without the written consent of each Lender directly and adversely affected thereby;

(e) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) release all or substantially all of the value of the Guarantees in any transaction or series of related transactions, without the written consent of each Lender;

(g) change the definition of “Required Lenders”, “Required Revolving Credit Lenders” or “Required Initial Term Lenders” without the written consent of each Lender;

(h) except as provided in Section 9.11(b), (i) contractually subordinate any Obligations in right of payment to any other Indebtedness of any Loan Party or (ii) contractually subordinate the Liens securing the Obligations on all or substantially all of the Collateral to Liens securing other Indebtedness, in each case without the written consent of each Lender directly and adversely affected thereby (it being understood that this clause (h) shall not (A) override the permission for (x) Liens expressly permitted by Section 7.01 as in effect on the Closing Date or (y) Indebtedness expressly permitted by Section 7.03 as in effect on the Closing Date, (B) restrict an amendment to increase the maximum permitted amount of Indebtedness (x) incurred under Section 7.03(f) and (y) secured by liens under Section 7.01(i) as in effect on the Closing Date or (C) apply to the incurrence of debtor-in-possession financing (or similar financing arrangements in insolvency proceedings in non-U.S. jurisdictions) approved by the applicable bankruptcy court); or

(i) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of each Lender directly adversely affected thereby.

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of an L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) [reserved]; (iii) no amendment, waiver or consent shall, unless in writing and signed by the applicable Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, such Agent under this Agreement or any other Loan Document; (iv)

Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; (v) (A) any amendment, modification, waiver, consent or other action that by its terms affects the rights or duties of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) will require only the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto if such Class of Lenders were the only Class of Lenders and (B) in determining whether the requisite percentage of Lenders have consented to any amendment, modification, waiver, consent or other action, any Defaulting Lenders shall be deemed to have voted in the same proportion as those Lenders who are not Defaulting Lenders, except with respect to (x) any amendment, modification, waiver, consent or other action which by its terms requires the consent of all Lenders or each affected Lender and (y) any amendment, modification, waiver, consent or other action that by its terms adversely affects any Defaulting Lender in its capacity as a Lender in a manner that differs in any material respect from other affected Lenders, in which case the consent of such Defaulting Lender, as applicable, shall be required, (vi) the consent of the Required Initial Term Lenders (but not the consent of the Required Lenders or any other Lender) shall be required to amend, waive or otherwise modify any condition precedent set forth in Section 4.02 hereof as it pertains to any Initial Term Loan (it being understood that this clause (vi) shall not require Required Initial Term Lender approval in connection with any waiver of a Default hereunder, in which case, only the approval of the Required Lenders shall be required in respect of such waiver) and (vii) the consent of the Required Revolving Credit Lenders (but not the consent of the Required Lenders or any other Lender) shall be required to amend, waive or otherwise modify any condition precedent set forth in Section 4.02 hereof as it pertains to any Revolving Credit Loan (it being understood that this clause (vii) shall not require Required Revolving Credit Lender approval in connection with any waiver of a Default hereunder, in which case, only the approval of the Required Lenders shall be required in respect of such waiver). Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Borrower and the Administrative Agent (A) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents and (B) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and, if applicable, the Required Revolving Credit Lenders.

Notwithstanding anything to the contrary contained in this Section 10.01, any guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, restated, supplemented, modified or waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any Lender if such amendment, restatement supplement, modification or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to add parallel debt provisions, (iii) to cure ambiguities, omissions, mistakes or defects or (iv) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents. Furthermore, with the consent of the Administrative Agent at the request of the Borrower (without the need to obtain any consent of any Lender), any Loan Document may be amended to cure ambiguities, inconsistencies, omissions, mistakes or defects (which determination by the Borrower and the Administrative Agent shall be conclusive).

Notwithstanding anything in this Section 10.01 to the contrary, (a) technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (but without the consent of any Lender) to the extent necessary (i) to integrate any Incremental Facilities, Refinancing Revolving Commitments, Refinancing Term Loans, Extended Term Loans or Extended Revolving Credit Commitments (including in connection with the pro rata allocation of L/C Obligations across multiple Revolving Credit Facilities), (ii) to integrate or make administrative modifications with respect to borrowings and issuances of Letters of Credit and (iii) to integrate any terms or conditions from any Incremental Facility Amendment that are more restrictive than this Agreement in accordance with Section 2.14(d) and (b) without the consent of any Lender or L/C Issuer, the Loan Parties and the Administrative Agent or Collateral Agent, as applicable, may, in their respective sole discretion, or shall, to the extent required by any Loan Document, enter into (x) any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties or as required by local law to give effect to, or protect any security interest for benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Laws or this Agreement, or in each case to otherwise enhance the rights or benefits of any Lender under any Loan Document or (y) any Acceptable Intercreditor Agreement with the holders of Indebtedness permitted by this Agreement to be secured by the Collateral. Without limitation of the foregoing, the Borrower may, without the consent of any Lender, (i) upon delivery to the Administrative Agent (A) increase the interest rates (including any interest rate margins or interest rate floors), fees and other amounts payable to any Class or Classes of Lenders hereunder or (B) increase, expand and/or extend the call protection provisions and any “most favored nation” provisions benefiting any Class or Classes of Lenders hereunder and/or (ii) with the consent of the Administrative Agent, modify any other provision hereunder or under any other Loan Document in a manner, as determined by the Administrative Agent in its sole discretion, more favorable to the then-existing Lenders or applicable Class or Classes of Lenders; provided that the Administrative Agent will have at least five Business Days (or such shorter period to which the Administrative Agent may consent in its reasonable discretion) after written notice from the Borrower to provide such consent and may, in its sole discretion, provide written notice to the Lenders regarding any such proposed amendment.

Section 10.02. Notices and Other Communications; Facsimile Copies.

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or an L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties hereto; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address,

facsimile number, electronic mail address or telephone number as shall be designated by such party in a written notice to the Borrower, the Administrative Agent and each L/C Issuer.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 10.02(b)), when deemed received in accordance with Section 10.02(b); provided that notices and other communications to the Administrative Agent and any L/C Issuer pursuant to Article II shall not be effective until actually received by such Person during the person's normal business hours. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) [Reserved].

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and any L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify the Administrative Agents from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Agents and Lenders. The Administrative Agent, each L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each L/C Issuer and Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct. All telephonic notices to the Administrative Agent may be recorded by the Administrative Agent or the L/C Issuer, as applicable, and each of the parties hereto hereby consents to such recording.

(f) Notice to other Loan Parties. The Borrower agrees that notices to be given to any other Loan Party under this Agreement or any other Loan Document may be given to the Borrower in accordance with the provisions of this Section 10.02 with the same effect as if given to such other Loan Party in accordance with the terms hereunder or thereunder.

(g) Communications. Each Loan Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication (unless otherwise approved in writing by the Administrative Agent) that (i) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) [reserved], (iv) provides notice of any Default under this Agreement or (v) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non excluded communications, collectively, the "Specified Communications"), by transmitting the Specified Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent at such e-mail address(es) provided to the Borrower from time to time or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. In addition, each Loan Party agrees to continue to provide the Specified Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Administrative Agent shall reasonably request. Nothing in this Section 10.02 shall prejudice the right of the Agents, any Lender or any Loan Party to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent shall require.

Section 10.03. No Waiver; Cumulative Remedies. No failure by any Lender, any L/C Issuer, the Administrative Agent or the Collateral Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 10.04. Attorney Costs and Expenses. The Borrower agrees (a) to pay or reimburse the Agents and the Arrangers for all reasonable and documented or invoiced out-of-pocket costs and expenses associated with the syndication of the Loans and Commitments and the preparation, execution and delivery, administration, amendment, modification, waiver and/or enforcement of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), including all Attorney Costs of one counsel to the Administrative Agent and one firm of local counsel in each relevant jurisdiction, and (b) to pay or reimburse the Agents, the Arrangers, each L/C Issuer and each Lender for all reasonable and documented or invoiced out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all costs and expenses incurred in connection with any workout or restructuring in respect of the Loans, all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel for all such Persons and one firm of local counsel in each relevant jurisdiction (and, in the case of an actual or perceived conflict of interest, where such Person affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Person)). The foregoing costs and expenses shall include all reasonable search, filing, recording and title insurance charges and fees related thereto, and other reasonable and documented or invoiced out-of-pocket expenses incurred by any Agent. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

Section 10.05. Indemnification by the Borrower and Limitation of Liability.

(a) Whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify and hold harmless each Agent, each Lender, each L/C Issuer, each Arranger and their respective Related Parties (collectively, the “Indemnitees”) from and against any and all losses, liabilities, damages, claims, and reasonable and documented or invoiced out-of-pocket fees and expenses (including reasonable Attorney Costs of one counsel for all Indemnitees and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Indemnitee)) that may be incurred by or asserted or awarded against any Indemnitee, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (c) any actual or alleged presence or Release or threat of Release of Hazardous Materials on, at, under or from any property currently or formerly owned, leased or operated

by the Borrower, any other Loan Party or any of their respective Subsidiaries, or any Environmental Liability related in any way to the Borrower, any other Loan Party or any of their respective Subsidiaries, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (all the foregoing, collectively, the “Indemnified Liabilities”), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, liabilities, damages, claims, and fees or expenses (x) are determined by a court of competent jurisdiction in a final and non-appealable decision to have resulted from such Indemnitee’s (or such Indemnitee’s Related Party’s) bad faith, gross negligence, willful misconduct or material breach of its obligations under the Loan Documents or (y) result from a proceeding that is not the result of an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against another Indemnitee (other than with respect to a claim against an Indemnitee acting in its capacity as an Agent or Arranger or similar role under the Loan Documents, subject to the preceding clause (x)). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05(a) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, managers, partners, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05(a) shall be paid within ten (10) Business Days after demand therefor; provided, however, if the Borrower has reimbursed any Indemnitee for any legal or other expenses in connection with any Indemnified Liabilities and there is a final non-appealable judgment of a court of competent jurisdiction that the Indemnitee was not entitled to indemnification or contribution with respect to such Indemnified Liabilities pursuant to the express terms of this Section 10.05(a), then the Indemnitee shall promptly refund such expenses paid by the Borrower to the Indemnitee. The agreements in this Section 10.05(a) shall survive the resignation of any Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the Obligations. For the avoidance of doubt, this Section 10.05(a) shall not apply to Taxes other than Taxes that represent liabilities, obligations, losses, damages, etc., with respect to a non-Tax claim.

(b) None of each Agent, each Lender, each L/C Issuer, each Arranger and their respective Related Parties (collectively, the “Lender-Related Persons”) shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Lender-Related Person, determined by a court of competent jurisdiction in a final and non-appealable decision, nor shall any Lender-Related Person or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date); provided that the foregoing shall not limit any Loan Party’s indemnification obligations under Section 10.05(a).

Section 10.06. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement



entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

Section 10.07. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including without limitation as permitted under Section 7.04), except that, unless as permitted under Section 7.04, neither the Borrower nor any of its Subsidiaries may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“Assignees”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b) and participations in L/C Obligations) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower; provided that, (I) no consent of the Borrower shall be required for an assignment (1) to any other Lender, any Affiliate of a Lender or any Approved Fund or (2) if a Specified Event of Default has occurred and is continuing, to any Assignee, and (II) the Borrower shall be deemed to have consented to any such assignment of any Loan or Commitment unless it shall object thereto by written notice to the Administrative Agent within (x) in the case of any Incremental Term B Loans, five (5) Business Days after having received notice thereof and (y) in all other cases, ten (10) Business Days after having received notice thereof;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment (I) of Term Loans to another Lender, an Affiliate of a Lender or an Approved Fund, (II) of Revolving Credit Commitments or Revolving Credit Loans to a Revolving Credit Lender, an Affiliate of a Revolving Credit Lender or an Approved Fund of a Revolving Credit Lender or (III) of unfunded Initial Term Commitments to an Initial Term Lender, an Affiliate of an Initial Term Lender or an Approved Fund of an Initial Term Lender; and

(C) in the case of any assignment of any Revolving Credit Commitments or Revolving Credit Loans, each L/C Issuer.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 (or \$1,000,000 in the case of any Incremental Term B Loans) unless the Borrower and the Administrative Agent otherwise consent; provided that (1) no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption;

(C) (1) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any documentation required by Section 3.01(f) and (2) the Assignee shall have delivered to the Administrative Agent all documentation and other information that the Administrative Agent reasonably requests in order to comply with its ongoing obligations under applicable "know your customer", anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

(D) the Assignee shall not be a natural person or a Disqualified Lender (and such Assignee shall be required to represent that it is not a Disqualified Lender or an Affiliate of a Disqualified Lender that would constitute a Disqualified Lender but for the fact that it is not readily identifiable as such on the basis of its name); provided that whether a prospective assignee is a Disqualified Lender may be communicated to a Lender upon request but the list of Disqualified Lenders shall not be posted or otherwise distributed to the Lenders, prospective Lenders and prospective assignees; provided, further, that it is agreed that the Borrower may withhold its consent to an assignment to any person that is known by it to be an Affiliate of a Disqualified Lender (regardless of whether it is readily identifiable as an Affiliate by virtue of its name (other than, in the case of Disqualified Lenders under clause (b) of the definition thereof, such Affiliates that are bona fide debt funds)).

(E) the Assignee shall not be a Defaulting Lender;

(F) [reserved];

(G) [reserved];

(H) in the case of an assignment to the Borrower or any of its Subsidiaries: (1) no Revolving Credit Loans or Revolving Credit Commitments shall be assigned to the Borrower and its Subsidiaries; (2) any Loans and Commitments assigned to, or purchased by, the Borrower or

its Subsidiaries shall be canceled immediately upon such assignment; (3) the Borrower and its Subsidiaries may not use proceeds of any Revolving Credit Facility to purchase Term Loans at a discount to par or for any other purchase or assignment of Loans permitted by this Section 10.07; and (4) the Borrower and its Subsidiaries may not purchase any Loans or Commitments so long as any Event of Default has occurred and is continuing;

(I) [reserved];

(J) [reserved]; and

(K) Notwithstanding anything to the contrary contained herein, if any Loans or Commitments are assigned or participated (x) to a Disqualified Lender or (y) without complying with the Borrower consent or notice requirements of this Section 10.07, then: (I) the Borrower may require such Person to assign its rights and obligations to one or more Eligible Assignees at a price equal to the lesser of (X) the current trading price of the Loans, (Y) par and (Z) the amount such Person paid to acquire such Loans or Commitments, in each case, without premium, penalty, prepayment fee or breakage (which assignment shall not be subject to any processing and recordation fee) and if such Person does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such assignment within three (3) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Person, then such Person shall be deemed to have executed and delivered such Assignment and Assumption without any action on its part, (II) no such Person shall receive any information or reporting provided by the Borrower, the Administrative Agent or any Lender, (III) for purposes of voting, any Loans or Commitments held by such Person shall be deemed not to be outstanding, and such Person shall have no voting or consent rights with respect to "Required Lenders" or Class votes or consents, (IV) for purposes of any matter requiring the vote or consent of each Lender affected by any amendment or waiver, such Person shall be deemed to have voted or consented to approve such amendment or waiver if a majority of the affected Class (giving effect to clause (III) above) so approves, and (V) such Person shall not be entitled to any expense reimbursement or indemnification rights under any Loan Documents (including Sections 10.04 and 10.05) and the Borrower expressly reserves all rights against such Person under contract, tort or any other theory and shall be treated in all other respects as a Defaulting Lender; it being understood and agreed that the foregoing provisions shall not apply to any assignee of a Disqualified Lender that becomes a Lender so long as such assignee is not a Disqualified Lender or an Affiliate thereof.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d) and receipt by the Administrative Agent from the parties to each assignment of a processing and recordation fee of \$3,500 (provided that (x) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (y) such processing and recordation fee shall not be payable in the case of assignments by any Affiliate of the Arrangers), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such

Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.03, 3.04, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note (if any), the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e). For greater certainty, any assignment by a Lender pursuant to this Section 10.07 shall not in any way constitute or be deemed to constitute a novation, discharge, recession, extinguishment or substitution of the existing Indebtedness and any Indebtedness so assigned shall continue to be the same obligation and not a new obligations.

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts) and L/C Borrowings, owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent demonstrable error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection (including, without limitation, electronically) by the Borrower, any Agent and any Lender (with respect to its own interests only), at any reasonable time and from time to time upon reasonable prior notice.

(e) Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent or any L/C Issuer, sell participations to any Person (other than a natural person or, so long as whether a prospective participant is a Disqualified Lender may be communicated to a Lender upon request, a Disqualified Lender) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 10.01(a), (b), (c), (d), (e) or (f) that directly affects such Participant. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.03 and 3.04 (through the applicable Lender), subject to the requirements and limitations of such Sections (including Section 3.01(f)) and Sections 3.05 and 3.06, to

the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(b) (provided that any documentation required to be provided under Section 3.01(f) shall be provided solely to the participating Lender). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; provided that such Participant shall be subject to Section 2.13 as though it were a Lender. Any Lender that sells participations shall maintain a register on which it enters the name and the address of each Participant and the principal amounts and related interest amounts of each Participant's participation interest in the Commitments and/or Loans (or other rights or obligations) held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent demonstrable error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, such Lender shall be acting as the non-fiduciary agent of the Borrower solely for this purpose and undertakes no duty, responsibility or obligation to the Borrower (without limitation, in no event shall such Lender be a fiduciary of the Borrower for any purpose). No Lender shall have any obligation to disclose all or any portion of a Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103(c) of the United States Treasury Regulations or, if different, under Sections 871(h) or 881(c) of the Code.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent and such consent explicitly acknowledges such participant's right to receive greater payment or except to the extent such entitlement to a greater payment results from a Change in Law after such Participant became a Participant.

(g) [Reserved].

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (A) an SPC shall be entitled to the benefit of Sections 3.01, 3.03, and 3.04 subject to the requirements and limitations of such Sections (including Section 3.01(e) and (f) and Sections 3.05 and 3.06), to the same extent as if such SPC were a Lender, but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.03 or 3.04) except to the extent any entitlement to greater amounts results from a Change in Law after the grant to the SPC occurred, (B) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable and such liability shall remain with the Granting Lender, and (C) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document,

remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (1) with notice to, but without prior consent of the Borrower and the Administrative Agent, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (2) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee Obligation or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, (i) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (ii) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; provided that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (A) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (B) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, any L/C Issuer may, upon thirty (30) days' notice to the Borrower and the Lenders, resign as an L/C Issuer; provided that on or prior to the expiration of such 30-day period with respect to such resignation, the relevant L/C Issuer shall have identified, in consultation with the Borrower, a successor L/C Issuer willing to accept its appointment as successor L/C Issuer. In the event of any such resignation of an L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor L/C Issuer hereunder; provided that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant L/C Issuer. If an L/C Issuer resigns as an L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)).

(k) [Reserved].

(l) No Agent-Related Person shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders; further, without limiting the generality of the foregoing clause, no Agent-Related Person shall (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

Section 10.08. Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information and to not use or disclose such information, except that Information may be disclosed (a) to its Related Parties on a need-to-know basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such

Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority, to any pledgee referred to in Section 10.07(g); (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process (in which case each Agent and Lender agrees (except with respect to any audit or examination conducted by bank accountants or any governmental, regulatory or self-regulatory authority exercising examination or regulatory authority and any disclosures required in the ordinary course by Law), to the extent practicable and not prohibited by applicable Law, to inform the Borrower promptly thereof prior to disclosure); (d) to any other party to this Agreement; (e) subject to an agreement containing provisions substantially the same as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any pledgee or in connection with similar transactions under which payments are to be made by reference to the Borrower and its obligations referred to in Section 10.07(i), any counterparty to a Permitted Receivables Financing, any actual or prospective party (or any of its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 by any Agent or Lender or any of their respective Related Parties; (h) to any Governmental Authority or examiner regulating any Lender (in which case each Agent and Lender agrees (except with respect to any audit or examination conducted by bank accountants or any governmental, regulatory or self-regulatory authority exercising examination or regulatory authority and any disclosures required in the ordinary course by Law), to the extent practicable and not prohibited by applicable Law, to inform the Borrower promptly thereof prior to disclosure); (i) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender); (j) for purposes of establishing a “due diligence” defense or in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (k) to the extent that such Information is received by such Lender, Agents or any of its Affiliates or Agent-Related Persons from a third party that is not, to such Lender’s knowledge, subject to any contractual or fiduciary confidentiality obligations owing to the Borrower or any of their Affiliates; (l) to the extent that such Information is independently developed by such Lender or any of its Affiliates without the use of any Information provided to it by or on behalf of any Loan Party; (m) to the extent consisting of customary disclosure regarding portfolio holdings in any public filing by such Lender; (n) upon the request or demand of any Governmental Authority or other regulatory authority having jurisdiction over the Agent or Lenders, as applicable (in which case the Agent or Lenders, as applicable, agree (except with respect to any audit or examination conducted by bank accountants or any regulatory authority exercising examination or regulatory authority and any disclosures required in the ordinary course by Law), to the extent practicable and not prohibited by applicable Law, to inform the Borrower promptly thereof prior to disclosure) or (o) subject to an agreement containing provisions substantially the same as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to the extent required by a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit risk mitigation coverage under which payments are to be made or may be made by reference to this Agreement. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions. For the purposes of

this Section 10.08, “Information” means all information received from any Loan Party or its Related Parties relating to the Borrower or any of its Subsidiaries or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry, in each case to the extent available to any Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08, including, without limitation, information delivered pursuant to Section 6.01, 6.02 or 6.03 hereof.

Section 10.09. Setoff. In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Agent and its Affiliates, each Lender and its Affiliates and each L/C Issuer and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness (in any currency) at any time owing by, such Agent and its Affiliates, such Lender and its Affiliates or such L/C Issuer and its Affiliates, as the case may be, to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Agent and its Affiliates, such Lender and its Affiliates or such L/C Issuer and its Affiliates hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent, such Lender, such L/C Issuer or such Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Notwithstanding anything to the contrary contained herein, none of each Agent and its Affiliates, each Lender and its Affiliates and each L/C Issuer and its Affiliates shall have a right to set off and apply any deposits held or other Indebtedness owing by such Agent or its Affiliates, such Lender or its Affiliates or such L/C Issuer or its Affiliates, as the case may be, to or for the credit or the account of any Subsidiary of a Loan Party that is a Foreign Subsidiary or a Domestic Foreign Holding Company. Each Lender and L/C Issuer agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender or L/C Issuer, as the case may be; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Agent, each Lender and each L/C Issuer under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that such Agent, such Lender and such L/C Issuer may have.

Section 10.10. Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10.11. Integration. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto



and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.12. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. The provisions of Sections 10.14 and 10.15 shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 10.13. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.14. GOVERNING LAW, JURISDICTION, SERVICE OF PROCESS.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED THEREIN).

(b) EXCEPT AS SET FORTH IN THE FOLLOWING PARAGRAPH, ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE SITTING IN THE BOROUGH OF MANHATTAN (PROVIDED THAT IF NONE OF SUCH COURTS CAN AND WILL EXERCISE SUCH JURISDICTION, SUCH EXCLUSIVITY SHALL NOT APPLY), AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. THE BORROWER, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO.

NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION (I) FOR PURPOSES OF ENFORCING A JUDGMENT, (II) IN CONNECTION WITH EXERCISING REMEDIES AGAINST THE COLLATERAL IN A JURISDICTION IN WHICH SUCH COLLATERAL IS LOCATED, (III) IN CONNECTION WITH ANY PENDING BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING IN SUCH JURISDICTION OR (IV) TO THE EXTENT THE COURTS REFERRED TO IN THE PREVIOUS PARAGRAPH DO NOT HAVE JURISDICTION OVER SUCH LEGAL ACTION OR PROCEEDING OR THE PARTIES OR PROPERTY SUBJECT THERETO.

Section 10.15. WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.15 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.16. Binding Effect. This Agreement shall become effective in accordance with Section 4.01 and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 10.17. Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the

Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law).

Section 10.18. Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents or the Secured Hedge Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provisions of this Section 10.18 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.19. Know-Your-Customer, Etc. Each Lender shall, promptly following a request by the Administrative Agent, provide all documentation and other information that the Administrative Agent reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Section 10.20. USA PATRIOT Act. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act and the requirements of the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation. This notice is given in accordance with the requirements of the USA PATRIOT Act and the requirements of the Beneficial Ownership Regulation and is effective as to the Lenders and the Administrative Agent.

Section 10.21. Intercreditor Agreements.

(a) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (i) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of any Acceptable Intercreditor Agreement then in effect, (ii) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and an Acceptable Intercreditor Agreement, on the other hand, the terms and provisions of any such Acceptable Intercreditor Agreement, shall control, and (iii) each Lender (and, by its acceptance of the benefits of any Collateral Document, each other Secured Party) hereby authorizes and instructs the Administrative Agent and Collateral Agent to execute any Acceptable Intercreditor Agreement from time to time on behalf of such Lender or other Secured Party, and such Lender or other Secured Party agrees to be bound by the terms thereof.

(b) Each Lender (and, by its acceptance of the benefits of any Collateral Document, each other Secured Party) hereby authorizes and instructs the Collateral Agent, as Collateral Agent and on

behalf of such Lender or other Secured Party, to enter into one or more Acceptable Intercreditor Agreements and one or more subordination agreements contemplated by Section 9.11(b) from time to time and agrees that it will be bound by and will take no actions contrary to the provisions thereof.

Section 10.22. Obligations Absolute. To the fullest extent permitted by applicable Law, all obligations of the Loan Parties hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Loan Party;
- (b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Loan Party;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;
- (d) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;
- (e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or
- (f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Loan Parties.

Section 10.23. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Agents, the Lenders and the Arrangers, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, each Lender and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) no Agent, Lender or Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) each Agent, each Lender and each Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Agent, Lender or Arranger has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each Agent, each

Lender and each Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.24. Electronic Execution of Assignments and Certain Other Documents. This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties, each Agent, each L/C Issuer and each Lender agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Each Agent, each L/C Issuer and each Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, no Agent or L/C Issuer is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent any Agent or L/C Issuer has agreed to accept such Electronic Signature, each Agent, L/C Issuer and Lender shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party, L/C Issuer or Lender without further verification and regardless of the appearance or form of such Electronic Signature, and (b) upon the request of any Agent, L/C Issuer or Lender, any Communication executed using an Electronic Signature shall be promptly followed by a manually executed counterpart.

No Agent or L/C Issuer shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with any Agent’s or L/C Issuer’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). Each Agent and each L/C Issuer shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each L/C Issuer and Lender hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document based solely on the lack of paper original copies of this Agreement or such other Loan Document, and (ii) any claim against each Agent, each L/C Issuer, each Lender and each Related Party

for any liabilities arising solely from an Agent's, L/C Issuer's or Lender's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT-RELATED PERSONS DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT-RELATED PERSON IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent-Related Person have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or any Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

Section 10.25. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
- (c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 10.26. Lender Representation.

- (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the

date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemption have been satisfied, with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 10.27. Acknowledgement Regarding any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or

any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties hereto acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.27, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

Section 10.28. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or other Obligation owing under this Agreement, together with all fees, charges and other amounts that are treated as interest on such Loan or other Obligation under Applicable Law (collectively, “Charges”), shall exceed the maximum lawful rate



(the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender or other Person holding such Loan or other Obligation in accordance with applicable Law, the rate of interest payable in respect of such Loan or other Obligation hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan or other Obligation but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender or other Person in respect of other Loans or Obligations or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate for each day to the date of repayment, shall have been received by such Lender or other Person. Any amount collected by such Lender or other Person that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or other Obligation or refunded to the Borrower so that at no time shall the interest and charges paid or payable in respect of such Loan or other Obligation exceed the maximum amount collectible at the Maximum Rate.

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

RINGCENTRAL INC.,  
as the Borrower

By: \s\ Sonalee Parekh  
Name: Sonalee Parekh  
Title: Chief Financial Officer

[Signature Page to Credit Agreement]

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BANK OF AMERICA, N.A.,  
as Administrative Agent and Collateral Agent

By: \s\ Carolen Alfonso  
Name: Carolen Alfonso  
Title: Assistant Vice President

[Signature Page to Credit Agreement]

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BANK OF AMERICA, N.A.,  
as an Initial Term Lender, Initial Revolving Credit Lender and L/C Issuer

By: \s\ Lindsay Sames  
Name: Lindsay Sames  
Title: Vice President

[Signature Page to Credit Agreement]

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JPMORGAN CHASE BANK, N.A.,  
as an Initial Term Lender, Initial Revolving Credit  
Lender and L/C Issuer

By: \s\ Richard Ong Pho  
Name: Richard Ong Pho  
Title: Executive Director

[Signature Page to Credit Agreement]

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WELLS FARGO BANK, N.A.,  
as an Initial Term Lender, Initial Revolving Credit  
Lender and L/C Issuer

By: \s\ Henry L. Li  
Name: Henry L. Li  
Title: Senior Vice President

[Signature Page to Credit Agreement]

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The Toronto-Dominion Bank, New York Branch  
as Initial Term Lender and Initial Revolving Credit Lender

By: \s\ Timothy Brogan  
Name: Timothy Brogan  
Title: Authorized Signatory

[Signature Page to Credit Agreement]

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SILICON VALLEY BANK,  
as Initial Term Lender and Initial Revolving Credit Lender

By: \s\Thuy Bui  
Name: Thuy Bui  
Title: Managing Director

[Signature Page to Credit Agreement]

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GOLDMAN SACHS BANK USA,  
as Initial Term Lender and Initial Revolving Credit Lender

By: \s\ Rebecca Kratz  
Name: Rebecca Kratz  
Title: Authorized Signatory

[Signature Page to Credit Agreement]

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MORGAN STANLEY BANK, N.A.,  
as Initial Revolving Credit Lender

By: \s\ Michael King  
Name: Michael King  
Title: Authorized Signatory

[Signature Page to Credit Agreement]

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DEUTSCHE BANK AG NEW YORK BRANCH,  
as Initial Revolving Credit Lender

By: \s\ Jessica Lutrario  
Name: Jessica Lutrario  
Title: Associate  
[jessica.lutrario@db.com](mailto:jessica.lutrario@db.com)  
212-250-8235

By: \s\ Philip Tancorra  
Name: Philip Tancorra  
Title: Vice President  
[philip.tancorra@db.com](mailto:philip.tancorra@db.com)  
212-250-6576

[Signature Page to Credit Agreement]

**List of Subsidiaries**

| <b>Name</b>                                    | <b>Jurisdiction of Incorporation</b> |
|--|--------------------------------------|
| RingCentral International, Inc.                | Delaware                             |
| RCLEC, Inc.                                    | Delaware                             |
| RCVA, Inc.                                     | Virginia                             |
| Connect First, Inc.                            | Delaware                             |
| RingCentral Florida, LLC                       | Delaware                             |
| RingCentral Canada Inc.                        | Canada                               |
| RingCentral Brasil Soluções em TI LTDA         | Brazil                               |
| RingCentral UK LTD                             | United Kingdom                       |
| RingCentral CH GmbH                            | Switzerland                          |
| RingCentral B.V.                               | Netherlands                          |
| RingCentral Ireland Limited                    | Ireland                              |
| RingCentral Espana S.L.                        | Spain                                |
| RingCentral Italy S.R.L.                       | Italy                                |
| RingCentral France SAS                         | France                               |
| RingCentral Hong Kong Limited                  | Hong Kong                            |
| Xiamen RingCentral Software Co., Ltd.          | China                                |
| RingCentral Singapore Pte. Ltd.                | Singapore                            |
| RingCentral Australia Pty Ltd                  | Australia                            |
| RingCentral Japan K.K.                         | Japan                                |
| RingCentral Korea, Ltd.                        | South Korea                          |
| RingCentral Holdings I, Inc.                   | Delaware                             |
| RingCentral IP Holdings, Inc.                  | Delaware                             |
| RingCentral Estonia OÜ                         | Estonia                              |
| RingCentral South Africa Pty Ltd               | South Africa                         |
| RingCentral Germany GmbH                       | Germany                              |
| RingCentral India Private Limited              | India                                |
| RingCentral Israel Ltd.                        | Israel                               |
| RingCentral Ventures, LLC                      | Delaware                             |
| RingCentral Innovation (India) Private Limited | India                                |
| RingCentral Philippines, Inc.                  | Philippines                          |
| RingCentral Taiwan, Ltd.                       | Taiwan                               |
| RingCentral Bulgaria EOOD                      | Bulgaria                             |

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statement (No. 333-234647) on Form S-3 and registration statements (Nos. 333-191433, 333-202367, 333-209794, 333-216297, 333-223228, 333-229898, 333-236641 and 333-253651) on Form S-8 of our report dated February 22, 2023, with respect to the consolidated financial statements of RingCentral, Inc., and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

San Francisco, California  
February 22, 2023

**Certification of Principal Executive Officer  
pursuant to  
Exchange Act Rules 13a-14(a) and 15d-14(a),  
as adopted pursuant to  
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Vladimir Shmunis, certify that:

1. I have reviewed this Annual Report on Form 10-K of RingCentral, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Vladimir Shmunis

\_\_\_\_\_  
Vladimir Shmunis  
*Chief Executive Officer and Chairman*  
*(Principal Executive Officer)*

Date: February 23, 2023

**Certification of Principal Financial Officer  
pursuant to  
Exchange Act Rules 13a-14(a) and 15d-14(a),  
as adopted pursuant to  
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Sonalee Parekh, certify that:

1. I have reviewed this Annual Report on Form 10-K of RingCentral, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Sonalee Parekh

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Sonalee Parekh  
Chief Financial Officer  
(Principal Financial Officer)

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Date: February 22, 2023

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
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 RingCentral, Inc. (the “Company”) on Form 10-K for the annual period ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Vladimir Shmunis, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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, as amended; 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: February 23, 2023

/s/ Vladimir Shmunis

\_\_\_\_\_  
Vladimir Shmunis  
*Chief Executive Officer and Chairman*  
*(Principal Executive Officer)*



**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
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 RingCentral, Inc. (the “Company”) on Form 10-K for the annual period ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Sonalee Parekh, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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, as amended; 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: February 23, 2023

/s/ Sonalee Parekh

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Sonalee Parekh  
Chief Financial Officer  
(Principal Financial Officer)