

**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 February 5, 2023

OR

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

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

Commission File Number 001-37570

**Pure Storage, Inc.**

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

27-1069557

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

650 Castro Street, Suite 400

Mountain View, California 94041

(Address of principal executive offices, including zip code)

(800) 379-7873

(Registrant's telephone number, including area code)

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

| <u>Title of each class</u>                         | <u>Trading symbol</u> | <u>Name of each exchange on which registered</u> |
|--|-----------------------|--|
| Class A Common Stock, par value \$0.0001 per share | PSTG                  | New York Stock Exchange                          |

**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 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 (Exchange Act) 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"/>            | Small 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 Exchange Act). Yes  No

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of August 5, 2022, the last business day of the registrant's most recently completed second quarter, was approximately \$8.3 billion based upon the closing price reported for such date by the New York Stock Exchange. Shares of the registrant's Class A common stock held by each executive officer, director and holder of 10% or more of the outstanding Class A common stock have been excluded from this calculation because such persons may be deemed affiliates. This determination of executive officer or affiliate status is not necessarily a conclusive determination for any other purpose.

As of March 24, 2023, the registrant had 308,045,301 shares of Class A common stock outstanding.

**Documents Incorporated by Reference**

Portions of the registrant's proxy statement for its 2023 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended February 5, 2023.

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## NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act), about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this report, including statements regarding our future results of operations and financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. In some cases, forward-looking statements may be identified by words such as “anticipate,” “believe,” “continue,” “could,” “design,” “estimate,” “expect,” “intend,” “may,” “plan,” “potentially,” “predict,” “project,” “should,” “will” or the negative of these terms or other similar expressions.

Forward-looking statements contained in this Annual Report on Form 10-K include, but are not limited to, statements regarding macroeconomic conditions, including, among other issues, high inflation, rising interest rates, current banking crisis, and a slowdown in demand, our ability to sustain or manage our growth and profitability, our expectations regarding demand for our products and services and trends in the external storage market, our expectations that sales prices may decrease or fluctuate over time, our plans to expand and continue to invest internationally, our plans to continue investing in marketing, sales, support and research and development, our shift to subscription services, including as-a-Service offerings, our expectations regarding fluctuations in our revenue and operating results, our expectations that we may continue to experience losses despite revenue growth, our ability to successfully attract, motivate, and retain qualified personnel and maintain our culture, our expectations regarding our technological leadership and market opportunity, our ability to realize benefits from our investments, including development efforts and acquisitions, our ability to innovate and introduce new or enhanced products, our expectations regarding product acceptance and our technologies, products and solutions, our competitive position and the effects of competition and industry dynamics, including alternative offerings from incumbent, emerging and public cloud vendors, the potential disruptions to our contract manufacturers or supply chain, our expectations concerning relationships with third parties, including our partners, customers, suppliers, and contract manufacturers, the success of the Portworx acquisition and technology, the adequacy of our intellectual property rights, expectations concerning potential legal proceedings and related costs, and the impact of adverse economic conditions on our business, operating results, cash flows and/or financial condition.

We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, and financial needs. These forward-looking statements are subject to a number of known and unknown risks, uncertainties and assumptions, including risks described in the section titled “Risk Factors.” These risks are not exhaustive. Other sections of this report include additional factors that could harm our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for our management to predict all risk factors nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ from those contained in, or implied by, any forward-looking statements.

Investors should not rely upon forward-looking statements as predictions of future events. We cannot assure investors that the events and circumstances reflected in the forward-looking statements will be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Except as required by law, we undertake no obligation to update publicly any forward-looking statements for any reason after the date of this report or to conform these statements to actual results or to changes in our expectations. Investors should read this Annual Report on Form 10-K and the documents that we reference in this Annual Report on Form 10-K and have filed as exhibits to this report with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

## WHERE INVESTORS CAN FIND MORE INFORMATION

Investors should note that we announce material financial information to our investors using our investor relations website, press releases, Securities and Exchange Commission (SEC) filings and public conference calls and webcasts. We also use the following social media channels as a means of disclosing information about the company, our products, our planned financial and other announcements and attendance at upcoming investor and industry conferences, and other matters and for complying with our disclosure obligations under Regulation FD:

Pure Storage Twitter Account ([twitter.com/PureStorage](https://twitter.com/PureStorage))

Pure Storage Company Blog ([blog.purestorage.com](http://blog.purestorage.com))

Pure Storage Facebook Page ([facebook.com/PureStorage](https://facebook.com/PureStorage))

Pure Storage LinkedIn Page ([linkedin.com/company/pure-storage](https://linkedin.com/company/pure-storage))

The information we post through these social media channels may be deemed material. Accordingly, investors should monitor these accounts and our company blog, in addition to following our press releases, public conference calls and webcasts, and filings with the SEC. This list may be updated from time to time. The information we post through these channels is not a part of this Annual Report on Form 10-K. These channels may be updated from time to time on Pure Storage's investor relations website.

## PART I

### Item 1. Business.

#### Overview

Data is foundational to our customers' business transformation, and we are focused on delivering innovative and disruptive data storage, products and services that enable customers to maximize the value of their data.

We are a global leader in data storage and management with a mission to redefine the storage experience by simplifying how people consume and interact with data. Our vision integrates our foundation of simplicity and reliability with three major market trends that are impacting all organizations large and small: (1) adoption of the cloud operating model everywhere; (2) the increase of modern cloud-native applications; and (3) the shift to modernizing today's data infrastructure with all-flash.

Our products and subscription services support a wide range of structured and unstructured data, at scale and across any data workloads in hybrid and public cloud environments, and include mission-critical production, test and development, analytics, disaster recovery (DR), and backup and recovery.

#### Differentiated Technology

Innovation and technology leadership is core to our culture, products and services, and future growth strategies. We have developed highly differentiated technology that is the foundation of our portfolio to create significant and sustainable competitive advantages.

##### ***Flash Software and Integrated Hardware Leadership***

We pioneered the use of solid-state, All-Flash technology in enterprise storage with a clean-slate approach to building Flash-based systems and have continued to expand our leadership position and technology differentiation across our tightly integrated software and hardware.

Our **Purity Software** was designed from the ground-up to maximize the benefits of solid-state storage. By focusing on All-Flash, our Purity software is able to deliver superior performance, reliability, cost, density and environmental sustainability efficiencies.

- **Performance** - Purity optimizes how data is placed and accessed on Flash to dramatically reduce the overheads and inefficiencies introduced by solid state drives (SSDs), allowing us to drive both higher performance and greater predictability.
- **Reliability** - Purity also makes it possible to optimize the use of Flash in our systems. This translates directly into high reliability and durability as well as longer service lifetimes of our arrays.
- **Efficiency** - Designed-for-flash algorithms and data structures allow us to deliver significantly higher storage efficiency from Flash than magnetic disk-based software by reducing over-provisioning or wasted Flash that would otherwise be needed. Our Purity software also delivers data reduction (e.g., compression and deduplication) creating significant savings and efficiencies for our customers.
- **Environmental Benefits** - Our Flash-optimized integrated hardware and software enables our products to deliver the same amount of data storage requiring significantly less power, space, cooling and e-waste when compared to both magnetic disk and competitive all-flash systems.

Our Purity software is shared across our products and provides leading enterprise-class data services such as always-on data-reduction, data protection and encryption, as well as a wide range of storage protocols such as block, file and object.

The advantages unlocked by our Purity software are significantly amplified by our integrated *DirectFlash* hardware technology. With *DirectFlash*, we build Flash Modules designed to work directly with NAND Flash chips, highly integrated and optimized for our Purity software. This deep integration of hardware and software allows us to be a proven leader in all-flash performance, reliability and efficiency from mainstream triple-level cell (TLC) flash and capacity-oriented quad-level cell (QLC) flash that delivers unparalleled density.

While QLC can make flash more economical, it requires significantly more sophisticated management, optimization and tuning to use effectively. With *DirectFlash*, we deliver the performance and density benefits of QLC flash, without compromising on efficiency, reliability or performance consistency. With *DirectFlash*, we are leading the industry, allowing us to accelerate the transition of disk to flash by replacing low-cost hybrid-flash and disk arrays. We have further extended this leadership by enabling customers to harness the cost efficiency of QLC while taming issues that SSD manufacturers have struggled with for years. In close collaboration with key QLC flash partners, we intend to drive our density roadmap for *DirectFlash* from the current 48TB to 300TB, building a 5x density advantage over our competition leveraging SSDs. Our increasing density roadmap for *DirectFlash* also substantially expands our cost and power efficiency advantages when compared to both disk and SSDs.

### ***Evergreen Architecture***

Our differentiated *Evergreen* architecture means that our products do not become obsolete or require wholesale replacement like traditional systems. *Evergreen* allows our arrays to be upgraded non-disruptively, enabling our customers to continuously benefit from the latest hardware and software technology, significantly reducing costly and unnecessary product replacements and associated e-waste. Several key technology elements are required to deliver on our *Evergreen* promise:

- **Future-proof Hardware** - We design and build our hardware platforms for higher reliability and longer service lifetimes to provide our customers the maximum benefit of Flash. Our hardware platforms are designed for each component (e.g. storage controllers, flash modules) to be independently replaceable and upgradable, allowing customers to have access to continuous and ever-improving hardware technology without requiring a wholesale replacement.
- **Non-Disruptive Upgrades** - A critical technology that allows us to keep customer systems continually up-to-date is the ability to upgrade both hardware and software completely non-disruptively. Continuous online improvement, without creating disruption or affecting running production systems, is required for customers to realize the full benefits of *Evergreen* and are a critical underpinning of delivering a full as-a-Service experience.
- **Telemetry and Pure1** - Continuous telemetry collection coupled with intelligent analytics supported by machine learning models allow us to proactively address issues before they occur. This capability delivers both predictive and proactive recommendations, targeted assessments, and workload planning based on knowledge accumulated across our entire fleet. Pure1 allows us to target and focus the most relevant innovation and improvements to our customers, delivered through *Evergreen*.

### ***Sustainable Technology***

Energy reduction and minimizing e-waste is a core part of our business strategy. We continue to invest in and innovate for a carbon-constrained world and are committed to continue delivering products and services that empower our customers to operate sustainably and efficiently while also gaining maximum productivity from their IT investments and reducing costs. Our technology differentiators deliver significant environmental sustainability benefits. *DirectFlash* allows us to build the most efficient and densest flash modules which has a direct effect on both cost and power efficiency - by providing higher capacity storage on a smaller hardware footprint, we lower the costs of our systems as well as their environmental footprint.

Our product platforms and solutions when compared to our competitors have significantly lower power consumption and e-waste contributing to our customers' achieving their own Environmental, Social and Governance (ESG) objectives.

The environmental benefits of this approach are outlined in our ESG report, which shows that our arrays are more energy efficient than competitive all-flash products. Additionally, two key environmental benefits of our *Evergreen* architecture include the reduction of both wasted energy and e-waste through non-disruptive upgrades and increased lifespan of our products. For more information about the ESG benefits of our technology, see our ESG report at <https://www.purestorage.com/company/corporate-social-responsibility.html>. This website reference is provided for convenience only, and the content on the referenced website is not incorporated by reference into this report.

## Products and Subscription Services

### Modernizing Infrastructure

We are leading the way to modernize storage infrastructure in our relentless pursuit of delivering the All-Flash Data Center.

- **FlashArray Platform** provides solutions for block-oriented storage, addressing database, application, virtual machine and other traditional workloads. *FlashArray* was the industry's first all-flash array and is driving the industry-wide transition from disk to Flash. *FlashArray* pioneered the approach of software designed from the ground-up for Flash and set the stage for industry leading simplicity, reliability, and rich data services. *FlashArray* has evolved through seven generations of controllers, a 100x increase in density, and a transition to all-NVMe flash - all delivered to customers non-disruptively through our *Evergreen* service.
  - **FlashArray//C** delivers the benefits of NVMe flash, performance and consolidation to simplify Tier-2 storage estates. *FlashArray//C* extends the core technology of *FlashArray* and *DirectFlash* technology to incorporate QLC flash to modernize and replace hybrid-flash and Tier-2 disk arrays. The benefits of QLC delivered by *FlashArray//C* are only achievable through our *DirectFlash* integrated hardware and software approach, and places us in a unique and differentiated position to accelerate the transition from disk to flash.
  - **FlashArray//XL**, our latest addition to the family, sets a new bar of higher performance, scale and capacity for the most demanding workloads.
  - **FlashArray File Services** delivers enterprise level multi-protocol file storage on FlashArray. As part of an unified approach to block and file data management, File Services reduces operational overhead by giving storage administrators policy driven automated management at the director, share, or virtual machine (VM) level. File Services delivers simplicity of management to a broad set of scale-up file data workloads including user data and department shares, content repositories such as Picture Archiving and Communication System (PACS) and video data, file-based applications, and now Network File System (NFS) datashares for virtual infrastructure.
- **Cloud Block Store** provides customers with a consistent storage experience and flexibility to operate a hybrid cloud model, leveraging both on-premise and public cloud infrastructure. *Cloud Block Store* is software-delivered, requires no dedicated hardware running in the public cloud or internet colocation data centers, and is designed to be multi-cloud, presently supporting Amazon Web Services and Microsoft Azure. *Cloud Block Store* is based upon the same Purity software that powers *FlashArray* in on-premise environments, enabling customers to easily implement hybrid cloud workflows.
- **FlashBlade Platform** provides solutions for unstructured data workloads of all types - from the most demanding modern "big data" applications such as real-time and log analytics, artificial intelligence (AI), commercial High Performance Computing (HPC) to data protection and recovery. *FlashBlade* was the industry's first all-flash array optimized for modern unstructured file and object applications, and enables performance at multi-Petabyte scale. *FlashBlade* is a scale-out system built on hardware and software technology that *FlashArray* also shares, combining integrated software-defined networking that delivers revolutionary performance and simplicity. *FlashBlade's* scale, simplicity, and multiple protocols allows customers to consolidate a diverse set of modern workloads while benefiting from cost-effective all-flash performance.
  - **FlashBlade//S**, the next generation of the product, was introduced in fiscal 2023 with a new architecture that disaggregates resources to allow customers to scale in any direction, enabling a more diverse set of workloads.
  - **FlashBlade//E**, a scale-out unstructured data repository that will be generally available by the end of April 2023, is built to handle exponential data growth with industry-leading energy efficiency. Priced at under \$0.20 per gigabyte including three years of *Evergreen* service with consumption up to five times less power than the hard disk systems that it will replace, *FlashBlade//E* provides an acquisition cost that is competitive to disk with lower operational costs.

### Modernizing Operations

We are committed to helping customers modernize their operations by delivering modern cloud-oriented services, management and automation to customers across their on-premises, private and public cloud environments. These elements form what we call the Cloud Operating Model delivered through our *Evergreen* architecture.

- Our **Evergreen Subscription** family of services includes *Evergreen//Forever*, *Evergreen//Flex* and *Evergreen//One* which leverages our **Evergreen Storage** architecture. This allows us to modernize technology and seamlessly deliver new software and hardware components as customers upgrade and expand their storage needs.
  - *Evergreen* subscription services allows us to modernize our customer's arrays (hardware and software), delivering improvements in software, flash and CPU technology without disruption or downtime.
  - Renewal pricing for our *Evergreen* subscription services is "Flat and Fair," which means that our customers do not need to worry that we will increase the price of these valuable services at renewal.
  - *Evergreen* subscription services includes Pure1, our cloud-based management and support offering which allows us to deliver predictive and proactive insights that identify potential issues before they occur and provide intelligent advice on workload, capacity and performance based on machine-learning models.
  - Our *Evergreen* subscription services is a key driver of customer satisfaction (reflected in our industry-leading Net Promoter Score).
- **Evergreen//Flex** is a fleet-level Evergreen architecture that offers users the advantage of storage hardware ownership with a lower upfront cost and a flexible pay-as-you-go subscription. *Evergreen//Flex* provides the flexibility and adaptability to move performance and stranded capacity to where data and applications need it most, with the security and control that comes from ownership of the solution. This latest model brings the modernization of *Evergreen//Forever* beyond the box, and is an efficient way to run a fleet of storage enabled by an asset utilization model.
- **Evergreen//One** is our service offering built on our *Evergreen Storage* architecture which allows us to deliver data storage to customers by leveraging a cloud operating model and service-level-agreements (SLAs). In fiscal 2023, we included an energy efficiency SLA in *Evergreen//One* guaranteeing a maximum number of actual watts per terabyte (TiB). Powered by *FlashArray*, *FlashBlade* and *Cloud Block Store*, *Evergreen//One* unifies on-premises and public-cloud storage services in a single storage subscription service that delivers a true hybrid cloud experience. With *Evergreen//One*, customers have flexibility to choose performance and capacity needs as well as where they consume and pay for their storage needs.
- **Pure Fusion** brings the simplicity of the cloud operating model anywhere with on-demand consumption and back-end provisioning, delivering an autonomous storage-as-code management platform. *Pure Fusion* is delivered through a Software-as-a-Service (SaaS) management plane and enables storage administrators to unify storage arrays and optimize storage pools. *Pure Fusion* allows administrators to offer storage through customized storage service classes providing storage consumers on-demand API-access to storage services, while automating previously complex tasks, such as storage provisioning, workload placement, workload mobility, and fleet rebalancing.

### **Modernizing Applications**

We are focused on helping customers modernize their applications- whether it is meeting the needs of modern unstructured data applications or supporting container-based cloud-native applications with the most robust and complete Kubernetes data platform.

- **Portworx by Pure Storage** is the market leader in cloud-native Kubernetes data management. As most modern and new software development is shifting to cloud-native architectures, *Portworx* is the only data management platform that is able to provide robust enterprise-grade container-storage, coupled with data-protection workflows such as Kubernetes backup, DR and migration, and allows customers true portability between on-premise, hybrid cloud and multi-cloud environments. The entire Portworx suite, inclusive of Portworx Enterprise, PX-Backup, and Portworx Data Services, is available as-a-service.



- **Portworx Data Services (PDS)** is the industry's first Database-as-a-Service Platform for Kubernetes. Modern applications are composed of dozens or even hundreds of microservices, often supported by multiple data services. Managing each of these data services in a dynamic, Kubernetes world is complex and time-consuming. With *PDS*, DevOps engineers can deploy managed, production-grade data services with the click of a button, on and across private and public clouds. With deployment options from the industry's broadest catalog of databases for SQL, NoSQL, search, streaming, and more, *PDS* helps developers get started faster. *PDS* also fully automates Day-2 operations, including monitoring, backups, high availability, DR, migration, auto-scaling, and security.

## **Our Strategic Growth Pillars**

Our growth pillars are driven by two significant secular trends - continued transition from disk to flash, and the cloud-driven adoption of cloud-native applications and the cloud operating model.

Our multi-faceted cloud business objectives include: (i) to be a leader in enabling cloud-native applications; (ii) enable portability of data services and applications across on-premise and cloud-environments; (iii) deliver the full cloud operating model - on-premises and across public clouds; and (iv) lead the transition from disk to flash in the hyperscalers and cloud providers.

Our four strategic growth pillars are described below.

### **Grow our subscription services business and drive differentiation with as-a-Service and Cloud operating model**

We are leading in the storage as-a-service market. We are outperforming the market because we are focused on providing these services through our technology rather than merely creating a financial and professional services construct.

We pioneered the *Evergreen* upgradable architecture that brings the benefits of the cloud operating model to an on-premises storage purchase. *Evergreen//One* extends the *Evergreen* architecture and subscription to deliver storage to customers as capacity and performance SLAs in a much more flexible, optimized and efficient manner.

### **Expand All-Flash into new use cases served by disk today**

We continue to drive industry disruption by further expanding flash into historical disk use cases, leveraging our flash software leadership, currently with QLC. We see a tremendous growth opportunity as Flash economics coupled with the growth in unstructured data disrupt the current hybrid and mechanical disk market. For instance, *FlashBlade//E*, a scale-out unstructured data repository built to handle exponential data growth with industry-leading energy efficiency will be priced at under \$0.20 per gigabyte including three years of *Evergreen* service.

Our extended advantage stems from three technology differentiators: Our leadership with direct-to-NAND software, our integrated hardware/software direct flash modules, and our data reduction capabilities. Because of our highly sophisticated Flash management software requiring less NAND, we drive significant efficiency advantages over SSDs by eliminating over-provisioning, extending endurance and requiring far less common equipment.

Modern unstructured data workloads, including artificial intelligence/machine learning (AI/ML), genomics, Internet of Things (IoT), self-driving vehicles, and analytics, are some of the largest generators of data. They require not just performance and scale, but dozens of applications working with that data along the way as it is collected, indexed, processed and analyzed. It requires unifying unstructured data access, which is inherent in our *FlashBlade* product, across file and object protocols, across input/output (I/O) types, and across application demands.

*FlashBlade*, combined with our multi-year advantage in flash technology and our leadership with *Portworx*, puts us in a unique position to win at the confluence of the growth of unstructured data and modern applications.

### ***Deliver hybrid cloud architecture and data services for modern applications***

We are extending our leadership position in delivering the cloud operating model and enabling cloud-native applications. We are empowering our customers to run and operate storage as-a-service, for both traditional and modern applications. We are committed to delivering a hybrid cloud architecture and advancing in the high-growth space of cloud-native applications. Our *Portworx* software product is the leader in the enterprise Kubernetes/container data space, providing customers a secure solution to both their primary container storage needs, as well as their critical data workflows like backup, DR and migration.

*Portworx*, along with *Cloud Block Store*, allows us to help customers make their hybrid-cloud real by enabling them to run and deploy both traditional and cloud-native apps on-premise and in-cloud with the same process and operations.

*Pure Fusion* and *PDS* extend our promise to deliver a true hybrid cloud architecture to hybrid environments. *Pure Fusion* extends the cloud operating model by automating the delivery of our storage offerings with a Kubernetes-delivered control plane. *PDS* creates another first mover advantage as we enable IT departments of our customers to provide and manage sophisticated data services with rapid deployment, scaling, management and self-service onboarding for their line of business users.

### ***Gain market share in the core block All-Flash market through innovative leadership***

We aim to take market share and outgrow the competition in the core all-flash block market with a proven “Simplicity at Scale” strategy, our highly differentiated customer experience with our *Evergreen* construct, and additional enterprise and service provider features and capabilities. Our core technology is also charting the path in the hyperscale and large enterprise environments for mainstream flash adoption which were previously dominated by mechanical / spinning disk.

### **Our Customers**

Our global customer base is over 11,000 at the end of fiscal 2023. Both large enterprises and smaller organizations with limited IT expertise or budgets benefit from using our technology. We have deployed our products and subscription services to customers across multiple industry verticals and geographies. We define a customer as an entity that purchases our products and services either from one of our channel partners or from us directly.

Our enterprise business model supports the largest global organizations, including hyperscalers and managed service providers (MSPs). Today, we are in approximately 58% of Fortune 500 companies, and the loyalty of our customers is reflected in our market-leading, certified customer Net Promoter Score (NPS) of 81.4 as of December 31, 2022.

### **Sales and Marketing**

**Sales.** We sell our products and subscription services using a direct sales force and our channel partners. Our sales organization is supported by sales engineers with deep technical expertise and responsibility for pre-sales technical support, solutions engineering and technical training. Our channel partners sell and market our products and subscription services in partnership with our direct sales force. This joint sales approach provides us with the benefit of direct relationships with our customers and expands our reach through the relationships of our channel partners. In certain geographies, we sell through a two-tier distribution model. We also sell to service providers that deploy our products and offer cloud-based storage services to their customers. We intend to continue to invest in our channel partners.

**Technology Alliances.** We work closely with technology partners that help us deliver an ecosystem of world-class solutions to our customers and ensure the efficient deployment and support of their environments. Our technology partners include application partners such as VMWare, Microsoft, Oracle and SAP, cloud partners such as Microsoft Azure, AWS, Google, and IBM, data protection partners such as Cohesity, Commvault and Veeam and infrastructure partners such as Cisco and NVIDIA. In addition, we work closely with our technology partners through co-marketing and lead-generation activities in an effort to broaden our marketing reach and help us win new customers and retain existing ones.

**Marketing.** Our marketing is focused on building our brand reputation and market awareness, communicating product advantages and demand generation for our sales force and channel partners. Our marketing effort consists primarily of product, field, channel, solutions, digital marketing and public relations.

## **Research and Development**

Our research and development efforts are focused on innovation, building new features and functionality for our existing products and subscription services, developing software, and building new products. Our products integrate both software and hardware innovations, and accordingly, our research and development teams employ both software and hardware engineers in the design, development, testing, certification and support of our products. Our research and development teams are primarily based in Mountain View, California, Prague, Czech Republic, Bangalore, India, Bellevue, Washington, and Vancouver, Canada. We also design, test and certify our products to ensure interoperability with a variety of third-party software, servers, operating systems and network components. We plan to continue investing globally in significant resources for our ongoing research and development efforts.

## **Manufacturing**

Our contract manufacturers manufacture, assemble, test and package our products in accordance with our specifications. We provide our contract manufacturers with a rolling forecast for anticipated orders, which our contract manufacturers use to build finished products. The product mix and volumes are adjusted based on anticipated demand and actual sales and shipments in prior periods. We continue to face various supply-chain challenges which ultimately could negatively impact our contract manufacturers and suppliers to source parts and build and deliver our products in a timely manner. Our supply chain challenges also include pricing pressure for certain materials as well as logistics. We work closely with our contract manufacturers to meet our product delivery requirements and to manage the manufacturing process and quality control. We also utilize a range of training and assessment tools from the Responsible Business Alliance to support continuous improvement in the social, environmental and ethical responsibility of our supply chain.

## **Seasonality**

We generally experience seasonality as sales of our products and subscription services are usually lower during the first quarter of our fiscal year and highest during the last quarter of our fiscal year. As a result, we expect that our business and results of operations will fluctuate from quarter to quarter.

## **Competition**

We operate in the intensely competitive data storage market that is characterized by constant change and innovation. Changes in the application requirements, data center infrastructure trends and the broader technology landscape result in evolving customer requirements for capacity, performance scalability and enterprise features of storage systems. Our main competitors include legacy vendors, such as Dell EMC, Hitachi Vantara, HP Enterprise, IBM, and NetApp, each of which offer a broad range of systems targeting various use cases and end markets and have the technical and financial resources to bring competitive products to market.

In addition, we compete against cloud providers and vendors of hyperconverged products. Some large-scale cloud providers, known for developing storage systems internally, offer alternatives to our products for a variety of customer workloads. Our market attracts new startups and more highly specialized vendors, as well as other vendors that may continue to acquire or bundle products that compete with our offerings. All of our competitors utilize a broad range of competitive strategies.

We believe the principal competitive factors in the storage market are as follows:

- Product and service innovation, features and enhancements, including ease of use, performance, reliability, scalability, and security;
- Product and service pricing and total cost of ownership;
- Product interoperability with customer networks and backup software;
- Product designs that help customers reduce their carbon footprint and contribute to meeting their environmental sustainability and savings goals;

- Global sales and distribution capability, including an ability to build and maintain incumbent customer relationships;
- Ability to take advantage of improvements in industry standard components; and
- Customer support and service.

We believe we compete favorably with our competitors on these factors as we continue to take market share. However, many of our competitors have substantially greater financial, technical and other resources, greater name recognition, larger sales and marketing budgets, broader distribution and larger and more mature intellectual property portfolios.

## **Intellectual Property**

Our success depends in part upon our ability to protect our core technology and intellectual property. To establish and protect our proprietary rights, we rely on a combination of intellectual property rights, including patents, trademarks, copyrights, trade secret laws, license agreements, confidentiality procedures, employee disclosure and invention assignment agreements and other contractual rights.

We have over 2,500 issued patents and patent applications in the United States and foreign countries. We also license technology from third parties when we believe it will facilitate our product offerings or business.

## **Human Capital Resources**

### ***Our People and Organization***

We are committed to demonstrating our core values—customer-first, persistence, creativity, teamwork, and ownership — and we believe that the interplay of strategy, organization, talent, and culture enables us to achieve outstanding results for all of our stakeholders.

We employ over 5,100 employees globally - approximately 3,400 in the U.S. and over 1,700 internationally as of the end of fiscal 2023. Our workforce is distributed across over 30 countries and we continue to expand our location strategy to ensure we can obtain the right skills and have a global mindset with diversity of thinking. Our business growth presents us with the opportunity to attract talent and provide competitive employee value propositions in terms of work environment, pay, benefits, professional development and career growth opportunities that help meet the varying needs of our workforce.

Our human capital strategy is developed by our executive committee and led by our Chief Human Resources Officer (CHRO). The CHRO delivers human capital reports to our Board of Directors and compensation and talent committee on a quarterly basis.

### ***Attracting, Developing and Retaining Talent***

In fiscal 2023, we grew headcount by approximately 22%, predominantly to advance our innovation, customer experience, and sales coverage.

To foster our employees' and our success, we seek to create an environment where people can thrive and can do their best work. We strive to maximize the potential of our human capital resources by creating a respectful, inclusive work environment with training and development programs that enables our global employees to create products and services that furthers their career goals and our corporate mission. We also have global performance management, and internal mobility programs to enable employee development, growth and performance.

### ***Diversity, Equity, and Inclusion (DEI)***

We continue to make strides to advance DEI. We believe that "walking the talk" on DEI is not only the right thing to do, but it results in stronger innovation, improved workplace culture and a stronger bottom line. Some of our efforts on DEI include:

- ***Advancing DEI from the top.*** In 2022, we launched the Inclusive Leadership Index (ILI) to recognize role model behaviors among our leaders at the VP level and above using several defined DEI factors. Annually, the leaders who attain role model results, according to the ILI, are recognized and given the opportunity to share their best practices internally.
- ***Supporting employee community and connection.*** Our Employee Resource Groups (ERGs) are a critical way to advance inclusion and belonging through building strong community, connection and opportunities for development among our employees.
- ***Driving equitable talent processes, pay and promotions.*** Our talent management processes include specific steps that ensure our performance reviews are equitable by level. We review pay equity twice a year. In addition we strive to ensure appropriate representation in candidate slates and interviewer panels during the hiring process. We also monitor the career progression ratio of female and underrepresented groups (URGs) versus the overall workforce to ensure equitable promotion practices.

We report on the metrics and progress in the areas mentioned above with our Board of Directors.

### ***Total Rewards***

We provide competitive and fair compensation and innovative benefit offerings. We regularly benchmark our programs against the market to ensure we are delivering competitive salaries, variable pay and equity awards as well as health and welfare benefits to employees. We offer a comprehensive and tailored set of benefits to employees and their families. Our total rewards efforts include:

- ***Support for all stages of life.*** From early career to retirement, we offer comprehensive and inclusive benefits to employees and their families for all stages including parental and adoption leave.
- ***Wellness benefits and programs.*** We encourage employees to practice self-care and proactively manage their mental and physical health. We support employee wellness through customizable programs and offerings ranging from mental health coaching, therapy, as well as nutrition and exercise programs. Employee wellness is also supported through our flexible time off policy.

### ***Our Culture as a Competitive Advantage***

Our customer-first culture and commitment to innovation create a thriving company that customers, partners, employees and investors love. Employee listening tools and data sources indicate that our high employee engagement is a key enabler of the positive customer experience and strong net promoter scores. Our Employee Voice Survey is implemented and assessed through a third party vendor. It focuses on measuring employee engagement, organization, team and manager effectiveness, equity, inclusion and belonging, career development and mental health. Our employee NPS has been consistently high since we started this survey a few years ago.

A key tenant of our culture is our commitment to integrity, respect and a safe work environment which is supported by our Speak Up Policy, Code of Conduct, and annual Culture of Compliance survey. We continually remind our employees that they are empowered to report concerns without fear of retaliation through our anonymous speak-up hotline and web portal or through their management chain, HR business partner, or Legal team.

## **Environmental, Social and Governance (ESG)**

We are committed to advancing our responsible ESG practices and impact across three key pillars: our technology, our operations, and our people. Our ESG pillars and priority focus areas are informed by an internal ESG prioritization assessment completed in 2021, which assessed topics based on their potential impact to both our own enterprise value creation and the environment and society more broadly. Our ESG governance model is structured to ensure the appropriate amount of oversight, assessment, and management of ESG risks and opportunities across our organization. Our Board of Directors provides oversight of each pillar through its committees, with the Audit and Risk Committee overseeing Environment, the Compensation and Talent Committee overseeing Social and the Nominating and Corporate Governance Committee overseeing Governance. In addition, our Board of Directors receives an annual update on ESG practices and our progress in tracking towards our goals.

Our ESG executive sponsors are the Chief Financial Officer, Chief Legal Officer and Chief Technology Officer. They meet regularly and work through VP and director level leaders who lead our internal ESG committees responsible for assessing, managing and progressing the integration of ESG priorities throughout our business operations.

In fiscal 2023, we continued quantifying our greenhouse gas (GHG) emissions across scope 1, 2, and 3 and made a commitment to set Science Based Targets (SBTi). We completed a Life Cycle Analysis (LCA) assessment, in accordance with ISO 14040 and 14044 and continue to identify opportunities to reduce the environmental impact of our products and solutions. We remain committed to progressing on each of our key ESG initiatives, creating value with minimal environmental harm. For more information about our key ESG initiatives, our progress on aligning to the Task Force on Climate-related Financial Disclosures (TCFD) and Sustainability Accounting Standards Board (SASB) as well as other key standards and frameworks, see our ESG report at <https://www.purestorage.com/company/corporate-social-responsibility.html>.

## **Available Information**

Our website address is [www.purestorage.com](http://www.purestorage.com). Information contained on or accessible through our website is not a part of this report and the inclusion of our website address in this report is an inactive textual reference only.

We make available, free of charge through our website, our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and amendments to those reports, filed or furnished pursuant to Sections 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after they have been electronically filed with, or furnished to, the SEC. In addition, the SEC maintains an internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

## **Trademark Notice**

Pure Storage, the “P” logo and other trade names, trademarks or service marks of Pure Storage appearing in this report are the property of Pure Storage. Trade names, trademarks and service marks of other companies appearing in this report are the property of their respective holders.

**Item 1A. Risk Factors.**

*Investing in our Class A common stock, which we refer to as our "common stock", involves a high degree of risk. Investors should carefully consider the risks and uncertainties described below, together with all of the other information contained in this report, including our consolidated financial statements and the related notes appearing in this annual report, before deciding to invest in our common stock. If any of the following risks actually occur, it could harm our business, prospects, operating results and financial condition. In such event, the trading price of our common stock could decline and investors might lose all or part of their investment.*

**Summary of Risk Factors**

Our business is subject to numerous risks and uncertainties, many of which are beyond our control. Some of the principal risks associated with our business include the following:

- Our business, operating results, and cash flows may be adversely impacted by uncertain macroeconomic conditions, including, among other issues, high inflation, rising interest rates, the current banking crisis and a slowdown in demand.
- Our sales cycles can be long, unpredictable and expensive, particularly during a global economic slowdown, making it difficult for us to predict future sales.
- We face intense competition from established companies and new entrants.
- If we do not manage the supply of our products and their components efficiently, our results of operation could be adversely affected.
- If we fail to develop and introduce new or enhanced products successfully, our ability to attract and retain customers could be harmed.
- If we fail to execute our transition to subscription offerings successfully, our revenues and results of operation may be harmed.
- If our security measures are compromised, or the security, confidentiality, integrity or availability of our information technology or data is compromised, our business could experience a material adverse impact.
- Our gross margins are impacted by a variety of factors and vary from period to period, making them difficult to predict with certainty.
- Our operating results may fluctuate significantly, which could make our future results difficult to predict and could cause our operating results to fall below expectations.
- The sales prices of our products and services may fluctuate or decline, which may reduce our gross profits, revenue growth, and adversely impact our financial results.

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

***Our business, operating results, and cash flows may be adversely impacted by uncertain macroeconomic conditions, including, among other issues, high inflation, rising interest rates, the current banking crisis and a slowdown in demand.***

Recent events and trends, including high inflation, rising interest rates, and the current banking crisis, as well as supply chain constraints and labor shortages and geopolitical tensions involving China, are affecting budgets and confidence and demand among our customers, particularly in the United States where we derive the majority of our revenue. While we have little to no exposure to regional, midsize or small banks, these pressures create a great deal of uncertainty and affect customer demand and our margins, costs and operations. Macroeconomic conditions can and do further exacerbate other risks discussed in this “Risk Factors” section, such as risks related to our sales and marketing efforts. If we are unable to successfully manage the effects of these pressures, our business, operating results, cash flows and financial condition may be adversely affected.

***Our sales cycles can be long, unpredictable and expensive, particularly during a global economic slowdown, making it difficult for us to predict future sales.***

Our sales efforts involve educating our customers about the use and benefits of our products and often involves an evaluation process that can result in a lengthy sales cycle, particularly for larger customers and especially in an economic slowdown. We spend substantial time and resources on our sales efforts without any assurance that our efforts will produce any sales. Macroeconomic concerns and the pandemic have impacted our sales efforts, such as by shifting customer priorities and reducing in-person meetings or events. In addition, product purchases are frequently subject to budget constraints, multiple approvals and unplanned administrative and other delays. Some of our customers make large concentrated purchases to complete or upgrade specific data storage deployments. As a consequence, our quarterly revenue and operating results may fluctuate from quarter to quarter. A substantial portion of our quarterly sales typically occurs during the last several weeks of the quarter, which we believe largely reflects customer buying patterns of products similar to ours and other products in the technology industry generally.

Since revenue from a product sale is not recognized until performance obligations are satisfied, a substantial portion of our sales late in a quarter may negatively impact the recognition of the associated revenue. Furthermore, our products come with a 30-day money back guarantee, allowing a customer to return a product within 30 days of receipt if the customer is not satisfied with its purchase for any reason. These factors, among others, make it difficult for us to predict when customers will purchase our products, which may adversely affect our operating results and cause our operating results to fluctuate. In addition, if sales expected from a specific customer for a particular quarter are not realized in that quarter or at all, our operating results may suffer.

***Our business may be harmed by trends in the overall external storage market.***

Despite ongoing data growth, the external storage market in which we compete has not experienced substantial growth in the past few years due to a combination of technology transitions, increased storage efficiency, competitive pricing dynamics and changing economic and business environments. Some customers are shifting spending toward the public cloud and software as a service, as well as other storage deployment models. Any failure on our part to accurately predict trends, successfully update our product offerings or to adapt our sales programs to meet changing customer demands and priorities could harm our business, operating results and financial condition. The future impact of these trends on both the short-term and long-term growth of the overall external storage market is uncertain. Reductions in the overall external storage market or the specific markets in which we compete would harm our business and operating results.

***The evolving market for data storage products makes it difficult to forecast demand for our products.***

The market for data storage products is rapidly evolving. Changes in the application requirements, data center infrastructure trends and the broader technology landscape result in evolving customer requirements for capacity, scalability and other enterprise features of storage systems. Our future financial performance depends on our ability to adapt to competitive dynamics and emerging customer demands and trends. We continue to expand our large capacity data storage products to compete directly with hard disk systems, and that strategy may take longer or may not be successful due to unforeseen factors. The enhancement of all-flash storage products by incumbent vendors and changes or advances in alternative technologies or adoption of cloud storage offerings that do not utilize our storage platform could adversely affect the demand for our products.



Offerings from large public cloud providers are expanding quickly and serve as alternatives to our products for a variety of customer workloads. Since these providers are known for developing storage systems internally, this trend reduces the demand for storage systems developed by original equipment manufacturers, such as us. It is difficult to predict with any precision customer adoption rates of new offerings, customer demand for our products or the future growth rate and size of our addressable market. A slowing or reduction in demand for our data storage products caused by technological challenges, alternative technologies and products or any other reason would result in a lower revenue growth rate or decreased revenue, either of which would negatively impact our business and operating results.

***We face intense competition from established companies and new entrants.***

We face intense competition from a number of established companies that sell competitive storage products, including Dell EMC, HP Enterprise, Hitachi Vantara, IBM, NetApp and others. Our competitors may have:

- greater name and brand recognition and longer operating histories;
- larger sales and marketing and customer support budgets and resources;
- broader distribution and established relationships with distribution partners and customers;
- the ability to bundle storage products with other products and services to address customers' requirements;
- greater resources to make acquisitions;
- larger and more mature product and intellectual property portfolios; and
- substantially greater financial, technical and other resources.

We also compete against cloud providers and vendors of hyperconverged products, which combine compute, networking and storage. These providers are growing and expanding their product offerings, potentially displacing some demand for our products. In addition, some of our competitors offer bundled products and services in order to reduce the initial cost of their storage products. Further, some of our competitors offer their storage products either at significant discounts or even for free in competing against us.

Many competitors have developed or acquired competing storage technologies with features or data reduction technologies that directly compete with our products or have introduced business programs designed, among other things, to compete with our innovative programs, such as our *Evergreen Storage* model. We expect our competitors to continue to improve their products, reduce their prices and introduce new features, services and technologies that may, or may claim to, offer greater value compared to our products. In addition, these developments may render our products or technologies obsolete or less competitive. These and other competitive pressures may prevent us from competing successfully against our current or future competitors.

***Many of our competitors have long-standing relationships with key decision makers at current and prospective customers, which may inhibit our ability to compete.***

Many of our competitors benefit from established brand awareness and long-standing relationships with key decision makers at our current and prospective customers. Our competitors often leverage these existing relationships to discourage customers from evaluating or purchasing our products. Additionally, most of our prospective customers have existing storage products supplied by our competitors who have an advantage in retaining the customer because, among other things, the incumbent vendor already understands the customer's IT infrastructure, user demands and needs, or the customer is concerned about actual or perceived costs of switching to a new vendor and technology. If we are unable to successfully sell our products to new customers or persuade our customers to continue purchasing our products, we will not be able to maintain or increase our market share and revenue, which would adversely affect our business and operating results.

***We rely on contract manufacturers to manufacture our products, and if we fail to manage our relationships with our contract manufacturers successfully, our business could be negatively impacted.***

We rely on a limited number of contract manufacturers to manufacture our products, which reduces our control over the assembly process and exposes us to risks, such as reduced control over quality assurance, costs and product supply. If we fail to manage our relationships with these contract manufacturers effectively, or if these contract manufacturers experience delays, disruptions, capacity constraints or quality control problems, our ability to timely ship products to our customers will be impaired, potentially on short notice, and our competitive position, reputation and financial results could be harmed. If we are required, for whatever reason, to change contract manufacturers or assume internal manufacturing operations, we may lose revenue, incur increased costs and damage our customer relationships. Qualifying a new contract manufacturer and commencing production is expensive and time-consuming. We may need to increase our component purchases, contract manufacturing capacity and internal test and quality functions if we experience increased demand. The inability of our contract manufacturers to provide us with adequate supplies of high-quality products could exacerbate other risk factors and cause a delay in our order fulfillment, and our business, operating results and financial condition may be harmed.

***We rely on a limited number of suppliers, and in some cases single-source suppliers, and any disruption or termination of our supply arrangements could delay shipments of our products and could harm our relationships with current and prospective customers.***

We rely on a limited number of suppliers and, in some cases, on single-source suppliers, for several key components of our products, and we have not generally entered into agreements for the long-term purchase of these components. If we are unable to obtain components from our existing suppliers, we may need to obtain these components through secondary sources or markets which could result in higher costs, delays and/or components which do not meet our quality requirements. While we actively monitor and manage our supply chain, we cannot anticipate the potential impact that a variety of factors, such as COVID-19 restrictions, may have on the manufacturing and shipment of our products.

This reliance on a limited number of suppliers and the lack of any guaranteed sources of supply exposes us to several risks, including:

- the inability to obtain an adequate supply of key components, including flash;
- price volatility for the components of our products;
- failure of a supplier to meet our quality or production requirements;
- failure of a supplier of key components to remain in business or adjust to market conditions; and
- consolidation among suppliers, resulting in some suppliers exiting the industry, discontinuing the manufacture of components or increasing the price of components.

Further, some of the components in our products are sourced from component suppliers outside the United States, including from China. The portion of our products that are sourced outside the United States may subject us to additional logistical risks or risks associated with complying with local rules and regulations in foreign countries. Significant changes to existing international trade agreements could lead to sourcing or logistics disruption resulting from import delays or the imposition of increased tariffs on our sourcing partners. For example, there have been, and may continue to be, significant changes to U.S. trade policies, legislation, treaties and tariffs, including announcements of import tariffs and export restrictions. As new legislation and/or regulations are implemented, existing trade agreements are renegotiated or terminated, and trade restrictions and tariffs are imposed on foreign-sourced or U.S. goods, it may be inefficient and expensive for us to alter our business operations in order to adapt to or comply with such changes. Such operational changes could have a material adverse effect on our business, financial condition, results of operations or cash flows.

As a result of these risks, we cannot assure investors that we will be able to obtain a sufficient supply of these key components in the future or that the cost of these components will not increase. If our supply of components is disrupted or delayed, or if we need to replace our existing suppliers, there can be no assurance that additional components will be available when required or that components will be available on terms that are favorable to us, which could extend our lead times, increase the costs of our components and harm our business, operating results and financial condition. We may not be able to continue to procure components at reasonable prices, which may impact our business negatively or require us to enter into longer-term contracts to obtain components. Any of the foregoing disruptions could exacerbate other risk factors and increase our costs and decrease our gross margins, harming our business, operating results and financial condition.

***If we do not manage the supply of our products and their components efficiently, our results of operation could be adversely affected.***

Managing the supply of our products and underlying components is complex and has become increasingly difficult, in part, due to supply chain constraints, component quality and inflationary pressure. Our third-party contract manufacturers procure components and build our products based on our forecasts, and we generally do not hold inventory for a prolonged period of time. These forecasts are based on estimates of future demand for our products, which are in turn based on historical trends and analyses from our sales and marketing organizations, adjusted for overall market conditions. In order to reduce manufacturing lead times and plan for adequate component supply, from time to time we may issue orders for components and products that are non-cancelable and non-returnable. Our inventory management systems and related supply chain visibility tools may be inadequate to enable us to make accurate forecasts and effectively manage the supply of our products and components. If we ultimately determine that we have excess supply, we may have to reduce our prices and write down or write off excess or obsolete inventory, which in turn could result in lower gross margins. Alternatively, insufficient supply levels may lead to shortages that exacerbate other risk factors and result in delayed revenue, reduced product margins or loss of sales opportunities altogether. If we are unable to effectively manage our supply and inventory, our results of operations could be adversely affected.

***If we fail to successfully maintain or grow our relationships with partners, our business, operating results and financial condition could be harmed.***

Our future success is highly dependent upon our ability to establish and maintain successful relationships with our partners, including value-added resellers, service providers and systems integrators. In addition to selling our products, our partners may offer installation, post-sale service and support in their local markets. In markets where we rely on partners more heavily, we have less contact with our customers and less control over the sales process and the quality and responsiveness of our partners. As a result, it may be more difficult for us to ensure the proper delivery and installation of our products or the quality or responsiveness of the support and services being offered. Any failure on our part to effectively identify, train and manage our channel partners and to monitor their sales activity, as well as the customer support and services provided to our customers, could harm our business, operating results and financial condition.

Our partners may choose to discontinue offering our products and services or may not devote sufficient attention and resources toward selling our products and services. We typically enter into non-exclusive, written agreements with our channel partners. These agreements generally have a one-year, self-renewing term, have no minimum sales commitment and do not prohibit our channel partners from offering products and services that compete with ours. Additionally, our competitors provide incentives to our existing and potential channel partners to use, purchase or offer their products and services or to prevent or reduce sales of our products and services. The occurrence of any of these events could harm our business, operating results and financial condition.

***Our brand name and our business may be harmed by the marketing strategies of our competitors.***

We believe that building and maintaining brand recognition and customer goodwill is critical to our success. Our efforts in this area have, on occasion, been hampered by the marketing efforts of our competitors, which have included negative or misleading statements about us and our products. If we are unable to effectively respond to the marketing efforts of our competitors and protect our brand and customer goodwill now or in the future, our business will be adversely affected.

***Sales to U.S. federal, state, local and foreign governments are subject to a number of challenges and risks that may adversely impact our business.***

Sales to U.S. federal, state, local and foreign governmental agencies may in the future account for a significant portion of our revenue and sales to governmental agencies impose additional challenges and risks to our sales efforts. Government certification requirements applicable to our products may change and in doing so restrict our ability to sell into the U.S. federal government sector until we have attained the revised certification. Government demand and payment for our products and services may be impacted by public sector budgetary cycles and funding authorizations, including in connection with an extended federal government shutdown, with funding reductions or delays adversely affecting public sector demand for our products and services. We sell our products to governmental agencies through our channel partners, and these agencies may have statutory, contractual or other legal rights to terminate contracts with our distributors and resellers for convenience or due to a default, and any such termination may adversely impact our future results of operations. Governments routinely investigate and audit government contractors' administrative processes, and any unfavorable audit could result in the government refusing to continue buying our products, which would adversely impact our revenue and results of operations, or institute fines or civil or criminal liability if the audit uncovers improper or illegal activities. Finally, governments may require certain products to be manufactured in the United States and other relatively high-cost manufacturing locations, and we may not manufacture all products in locations that meet these requirements, affecting our ability to sell these products to governmental agencies.

### **Risks Related to Our Products and Subscription Services Offerings**

***If we fail to develop and introduce new or enhanced products successfully, our ability to attract and retain customers could be harmed.***

We operate in a dynamic environment characterized by rapidly changing technologies and industry standards and technological obsolescence. To compete successfully, we must design, develop, market and sell new or enhanced products that provide increasingly higher levels of performance, capacity, functionality and reliability and that meet the expectations of our customers, which is a complex and uncertain process. We believe that we must continue to dedicate significant resources to our research and development efforts and innovate business models such as *Evergreen//One* to maintain or expand our competitive position. We continue to expand our large capacity data storage products to compete directly with hard disk systems. Our investments may take longer to generate revenue or may generate less revenue than we anticipate. The introduction of new products by our competitors, or the emergence of alternative technologies or industry standards could render our existing or future products obsolete or less competitive.

As we introduce new or enhanced products, we must successfully manage product launches and transitions to the next generations of our products and encourage our customers to adopt new products and features. If we are not able to successfully manage the development and release of new or enhanced products, our business, operating results and financial condition could be harmed. Similarly, if we fail to introduce new or enhanced products, such as new or improved software features, that meet our customers' needs in a timely or cost-effective fashion, we may lose market share and our operating results could be adversely affected.

***If we fail to execute our transition to subscription offerings successfully, our revenues and results of operation may be harmed.***

We are now offering all of our products and services on a subscription basis, including our hardware and software products through *Evergreen//One* and *Cloud Data Services*. These business models are relatively new to the storage market and will continue to evolve, and we may not be able to compete effectively, drive continued revenue growth or maintain the profitability with these business models. These business models require different accounting of our customer transactions, such as changing how we recognize revenue and capitalize commissions, among other things. In addition, these business models may require compliance with additional regulatory, legal and trade licensing requirements in some countries. Continued market acceptance of subscription offerings will be dependent on our ability to create a seamless customer experience and to optimally price our products in light of marketplace conditions, our costs and customer demand. Subscription offerings will cause us to incur incremental operational, technical, legal and other costs. Additionally, the subscription models offered by us and our competitors may unfavorably impact the pricing of and demand for our on-premise offerings, which could reduce our revenues and profitability. If we do not successfully execute our business strategy, which includes subscription offerings, or anticipate the needs of our customers, our financial results could be negatively impacted.

***Our products are highly technical and may contain defects or bugs, which could cause data unavailability, loss, breach or corruption that might, in turn, result in liability and harm to our reputation and business.***

Our products are highly technical and complex and are often used to store information critical to our customers' business operations. Our products may contain errors, defects or security vulnerabilities that could result in data unavailability, loss, corruption or other harm to our customers. Some errors in our products may only be discovered after they have been installed and used by customers. We have, from time to time, identified vulnerabilities in our products. Despite our efforts to detect and remediate actual and potential vulnerabilities in our systems, we cannot be certain that we will be able to address any such vulnerabilities, in whole or part, and there may be delays in developing and deploying patches and other remedial measures to adequately address vulnerabilities. We may also incur unexpected costs associated with replacing defective hardware or ensuring that hardware remains interoperable and upgradable. Any of these errors, defects, bugs or security vulnerabilities may leave us, our products and our customers susceptible to exploitation, including by malicious actors. Any errors, defects or security vulnerabilities in our products could result in a loss of revenue, injury to our reputation, loss of customers or increased service and warranty costs, any of which could adversely affect our business and operating results. In addition, errors or failures in the products of third-party technology vendors may be attributed to us and may harm our reputation.

We could face claims for product liability, tort or breach of warranty. We may not be able to enforce provisions in our contracts relating to warranty disclaimers and liability limitations. Defending a lawsuit, regardless of its merit, would be costly and could divert management's attention and adversely affect the market's perception of us and our products. Our business liability insurance coverage may be inadequate with respect to a claim and future coverage may not be available on acceptable terms or at all. These product-related issues could result in claims against us, and our business, operating results and financial condition could be harmed.

***If we are unable to ensure that our products interoperate with third party operating systems, software applications and hardware, we may lose or fail to increase our market share.***

Our products must interoperate with our customers' infrastructure, specifically networks, servers, software and operating systems, which are offered by a wide variety of vendors. When new or updated versions of these operating systems or applications are introduced, we may need to develop updated versions of our software so that our products continue to interoperate properly. We may not deliver or maintain interoperability quickly, cost-effectively or at all as these efforts require capital investment and engineering resources. If we fail to maintain compatibility of our products with these infrastructure components, our customers may not be able to fully utilize our products, and we may, among other consequences, lose or fail to increase our market share and experience reduced demand for our products, which may harm our business, operating results and financial condition.

***Our products must conform to industry standards in order to be accepted by customers in our markets.***

Generally, our products comprise only a part of an IT environment. The servers, network, software and other components and systems deployed by our customers must comply with established industry standards in order to interoperate and function efficiently together. We depend on companies that provide other systems in this ecosystem to conform to prevailing industry standards. These companies are often significantly larger and more influential in driving industry standards than we are. Some industry standards may not be widely adopted or implemented uniformly and competing standards may emerge that may be preferred by our customers. If larger companies do not conform to the same industry standards that we do, or if competing standards emerge, sales of our products could be adversely affected, which may harm our business.

***Our ability to successfully market and sell our products is dependent in part on ease of use and the quality of our customer experience offerings, and any failure to offer high-quality technical services and support could harm our business.***

Once our products are deployed by our customers, customers depend on our customer experience organization to drive non-disruptive upgrades and resolve technical issues relating to our products. Our ability to provide effective technical services is largely dependent on our ability to attract, train and retain qualified personnel, as well as to engage with qualified support partners that provide a similar level of customer support. In addition, our sales process is highly dependent on our product and business reputation and on recommendations from our existing customers. Although our products are designed to be interoperable with existing servers and systems, we may need to provide customized installation and configuration services to our customers before our products become fully operational in their environments. Any failure to maintain or a market perception that we do not maintain, high-quality technical services and support could harm our reputation, our ability to sell our products to existing and prospective customers and our business.

#### **Risks Related to Our Operating Results or Financial Condition**

***We intend to continue focusing on revenue growth and increasing our market penetration and international presence by investing in our business, which may put pressure on near-term profitability.***

Our operating expenses largely are based on anticipated revenue, and a high percentage of our expenses are, and will continue to be, fixed in the short term. If we fail to adequately increase revenue and manage costs, we may not achieve or maintain profitability in the future. As a result, our business could be harmed, and our operating results could suffer. Our strategy is to continue investing in marketing, sales, support and research and development. We believe continuing to invest heavily in our business is critical to our future success and meeting our growth objectives. We anticipate that our operating costs and expenses will continue to increase in absolute terms. Even if we achieve or maintain significant revenue growth, we may experience losses, forgoing near-term profitability on a U.S. GAAP basis.

***Our gross margins are impacted by a variety of factors and vary from period to period, making them difficult to predict with certainty.***

Our gross margins fluctuate from period to period due primarily to product costs, customer mix and product mix. A variety of factors may cause our gross margins to fluctuate and make them difficult to predict, including, but not limited to:

- sales and marketing initiatives, discount levels, rebates and competitive pricing;
- changes in customer, geographic or product mix, including mix of product configurations;
- the cost of components, including flash and DRAM, and freight;
- new product introductions and enhancements with higher product costs;
- excess inventory levels or purchase obligations as a result of changes in demand forecasts or product transitions;
- an increase in product returns, product warranty, order rescheduling and cancellations;
- the timing of technical support service contracts and contract renewals;
- inventory stocking requirements to mitigate supply chain constraints, accommodate unforeseen demand or support new product introductions; and
- inflation and other adverse economic pressures.

If we are unable to manage these factors effectively, our gross margins may decline, and fluctuations in gross margins may make it difficult to manage our business and achieve or maintain profitability, which could materially harm our business, operating results and financial condition.

***Our operating results may fluctuate significantly, which could make our future results difficult to predict and could cause our operating results to fall below expectations.***

Our operating results may fluctuate due to a variety of factors, a portion of which are outside of our control. As a result, comparing our results on a period-to-period basis may not be meaningful.

Factors that are difficult to predict and that could cause our operating results to fluctuate include:

- the timing and magnitude of orders, shipments and acceptance of our products in any quarter, including product returns, order rescheduling and cancellations by our customers;
- the impact on timing and amount of revenue recognized resulting from the cancellation of unfulfilled orders by our customers or our inability to fulfill orders;
- fluctuations or seasonality in demand and prices for our products;
- our ability to control the costs of the components we use or to timely adopt subsequent generations of components;
- disruption in our supply chains, shipping logistics, component availability and related procurement costs;
- reductions in customers' budgets for IT purchases;
- changes in industry standards in the data storage industry;
- our ability to develop, introduce and ship new products and product enhancements that meet customer requirements and to effectively manage product transitions;
- changes in the competitive dynamics of our markets, including new entrants or discounting of product prices;
- our ability to control or mitigate costs, including our operating expenses, to support business growth and our continued expansion;
- the impact of inflation on labor and other costs, other adverse economic conditions and the impact of public health epidemics or pandemics; and
- future accounting pronouncements and changes in accounting policies.

The occurrence of any one of these factors could negatively affect our operating results in any particular quarter.

***The sales prices of our products and services may fluctuate or decline, which may reduce our gross profits, revenue growth, and adversely impact our financial results.***

The sales prices of our products and services may fluctuate or decline for a variety of reasons, including competitive pricing pressures, discounts, the introduction of competing products or services or promotional programs, a change in our mix of products and services, cost of components, supply chain constraints and inflation and other adverse economic conditions. Uncertain macroeconomic conditions have impacted NAND pricing which could result in lower sales prices. Competition continues in the markets in which we participate, and we expect competition to increase in the future, thereby leading to increased pricing pressures. Larger competitors may reduce the price of products or services that compete with ours or may bundle them with other products and services. Additionally, although we price our products and services predominantly in U.S. dollars, currency fluctuations in certain countries and regions may negatively impact actual prices that partners and customers are willing to pay in those countries and regions. Furthermore, we anticipate that the prices for our products will decrease over product life cycles. If we are required to decrease our prices to be competitive and are not able to offset this decrease by increases in the volume of sales or the sales of new products with higher margins, our gross margins and operating results could be adversely affected.

***We have experienced growth in prior periods, and we may not be able to sustain future growth effectively or at all.***

We have significantly expanded our overall business, customer base, headcount, channel partner relationships and operations in prior periods, and we anticipate that we will continue to expand and experience growth in future periods. For example, we delivered year-over-year revenue growth of 26% for fiscal 2023 and our headcount increased from over 3,800 at the end of fiscal 2021 to over 4,200 employees at the end of fiscal 2022, and to over 5,100 employees at the end of fiscal 2023. Our future operating results will depend to a large extent on our ability to successfully sustain our growth and manage our continued expansion. To sustain and manage our growth successfully, we believe that we must, among other things, effectively allocate resources and operate our business across a wide range of priorities.

We expect that our future growth will continue to place strain on our managerial, administrative, operational, financial and other resources. We will incur costs associated with this future growth prior to realizing the anticipated benefits, and the return on these investments may be lower, may develop more slowly than we expect or may never materialize. Investors should not consider our revenue growth in prior quarterly or annual periods as indicative of our future performance. In future periods, we may not achieve similar percentage revenue growth rates as we have achieved in some past periods. If we are unable to maintain adequate revenue or revenue growth, our stock price could be volatile, and it may be difficult to achieve and maintain profitability. If we are unable to manage our growth successfully, we may not be able to take advantage of market opportunities or release new products or enhancements in a timely manner, and we may fail to satisfy customers' expectations, maintain product quality, execute on our business plan or adequately respond to competitive pressures, each of which could adversely impact our growth and affect our business and operating results.

***If we are unable to sell renewals of our subscription services to our customers, our future revenue and operating results will be harmed.***

Existing customers may not renew their subscription services agreements after the initial period and, given changing customer purchasing preferences, we may not be able to accurately predict our renewal rates. Our customers' renewal rates may decline or fluctuate as a result of a number of factors, including their available budget and the level of their satisfaction with our products, customer support and pricing compared to that offered by our competitors. If our customers renew their contracts, they may renew on terms that are less economically beneficial to us. If our customers do not renew their agreements or renew on less favorable terms, our revenue may grow more slowly than expected, if at all.



***We expect that revenue from subscription services will increase as a percentage of total revenue over time, and because we recognize this revenue over the term of the relevant contract period, downturns or upturns in sales of subscription services are not immediately reflected in full in our results of operations.***

Our revenue from subscription services has been increasing as a percentage of total revenue over time. We are also increasing the number of our subscription-based offerings, such as *Evergreen//One*, though it is more difficult to predict the rate at which customers will adopt, and the rate at which our revenue will grow from these new offerings. We recognize subscription services revenue ratably over the term of the relevant period. As a result, much of the subscription services revenue we report each quarter is derived from agreements that we sold in prior quarters. Consequently, a decline in new or renewed subscription services agreements in any one quarter will not be fully reflected in revenue in that quarter but will negatively affect our revenue in future quarters. Accordingly, the effect of significant downturns in sales of subscription services is not reflected in full in our results of operations until future periods. It is also difficult for us to rapidly increase our subscription services revenue through additional sales in any period, as revenue from renewals must be recognized ratably over the applicable service period.

***We may require additional capital to support business growth, and this capital might not be available on acceptable terms, or at all.***

We intend to continue to make investments to support our business growth and may require additional funds to support business initiatives, including the need to develop new products or enhance our existing products, 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. If we raise additional funds through further issuances of equity or convertible debt securities, our stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing we undertake in the future could involve additional restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to support our business growth and to respond to business challenges could be significantly limited and our prospects and financial condition could be harmed.

***We are exposed to the credit risk of some of our customers, which could harm our business, operating results and financial condition.***

Most of our sales are made on an open credit basis. We monitor individual customer payment capability when we grant open credit arrangements and may limit these open credit arrangements based on perceived creditworthiness. We also maintain allowances we believe are adequate to cover exposure for doubtful accounts. Although we have programs in place that are designed to monitor and mitigate these risks, we cannot assure investors these programs will be effective in managing our credit risks, especially as we expand our business internationally. If we are unable to adequately control these risks, our business, operating results and financial condition could be harmed.

## **Risks Related to Our Operations**

***If our security measures, or those maintained on our behalf, are compromised now, or in the future, or the security, confidentiality, integrity or availability of our information technology, software, services, networks, products, communications or data is compromised, limited, or fails, our business could experience a material adverse impact, including without limitation, a material interruption to our operations, harm to our reputation, a loss of customers, significant fines, penalties and liabilities, or breach or triggering of data protection laws, privacy policies or other obligations.***

In the ordinary course of our business, we collect, store, transmit and otherwise process proprietary, confidential and sensitive data, including by using our internal systems, networks and servers, which may include intellectual property, our proprietary business information and that of our customers, suppliers and business partners and sales data, which may, on occasion, include personally identifiable information. Additionally, we design and sell products that allow our customers to store their data. The security of our own networks and the intrusion protection features of our products are both critical to our operations and business strategy.

Cyberattacks, malicious internet-based activity and online and offline fraud are prevalent and continue to increase. These threats are becoming increasingly difficult to detect. The threats to information systems and information may include: traditional computer “hackers,” social engineering schemes (for example, attempts to induce fraudulent invoice payments or divert money to us), software bugs, malicious code (such as viruses and worms), personnel misconduct or error, faulty password management, theft, denial-of-service attacks (such as credential stuffing), advanced persistent threat intrusions, as well as attacks from nation-state and nation-state supported actors. We may also be the subject of phishing attacks, viruses, malware installation, server malfunction, software or hardware failures, loss of data or other computer assets, adware and other similar issues. Additionally, ransomware attacks, including those from organized criminal threat actors, nation-states and nation-state supported actors, are becoming increasingly prevalent and severe and can lead to significant interruptions, delays, or outages in our operations, disruptions in our services, loss of data, loss of income, significant extra expense to restore data or systems, reputational loss and the diversion of funds. To alleviate the financial, operational and reputational impact of a ransomware attack, it may be preferable to make extortion payments, but we may be unwilling or unable to do so (including, for example, if applicable laws or regulations prohibit such payments). Similarly, supply chain attacks have increased in frequency and severity, and we cannot guarantee that third parties and infrastructure in our supply chain have not been compromised or that they do not contain exploitable defects or bugs that could result in a breach of or disruption to our platform, systems and network or the systems and networks of third parties that support us and our business.

We devote significant resources to network security, authentication technologies, data encryption and other security measures designed to protect our systems and data, including to secure the transmission and storage of data and prevent third-party access to our data or accounts, but there can be no assurance that our security measures or those of our service providers, partners and other third parties upon whom we rely will be effective in protecting against a security incident or the materially adverse impacts that may arise from a security incident. Any destructive or intrusive breach of our internal systems could result in the information stored on our networks, including, without limitation, source code for our products and services or the networks and systems of third parties upon whom we rely being accessed, publicly disclosed, lost or stolen.

Additionally, an effective attack on our products could disrupt the proper functioning of our products, allow unauthorized access to sensitive, proprietary or confidential information of ours or our customers, disrupt or temporarily interrupt our and our customers’ operations or cause other destructive outcomes, including the theft of information sufficient to engage in fraudulent transactions. The risk that these types of events could seriously harm our business is likely to increase as we expand our network of channel partners, resellers and authorized service providers and operate in more countries. The economic costs to us to eliminate or alleviate cyber or other security problems, viruses, worms, malicious software systems and security vulnerabilities could be significant and may be difficult to anticipate or measure because the damage may differ based on the identity and motive of the programmer or hacker, which are often difficult to identify. If any of these types of security breaches were to occur and we were unable to protect our products, systems and data, or if we were perceived to have such a security incident, our relationships with our business partners and customers could be materially damaged, our reputation and brand could be materially harmed, use of our products could decrease and we could be exposed to a risk of loss or litigation, including, without limitation, class action litigation, and other possible liabilities. A security incident could also result in government enforcement actions that could include investigations, fines, penalties, audits and inspections, additional reporting requirements and/or oversight, temporary or permanent bans on all or some processing of personal information.

Moreover, applicable data protection laws, contracts, policies and other data protection obligations may require us to notify relevant stakeholders of security incidents, including affected individuals, customers, regulators, and credit reporting agencies. Such disclosures are costly and the disclosures or the failure to comply with such requirements could lead to material adverse impacts such as negative publicity, loss of customer confidence in our services our security measures, investigations and private or government claims. Security incidents that impact our information technology systems could also result in breaches of our contracts (some of which may not have liability limitations and/or require us to indemnify affected parties) and could lead to litigation with customers, partners or other relevant stakeholders. These proceedings could force us to spend money in defense or settlement, divert management’s time and attention, increase our costs of doing business and adversely affect our reputation or otherwise adversely affect our business.

***If we are unable to attract, motivate and retain sales, engineering and other key personnel, including our management team, we may not be able to increase our revenue and our business, operating results and financial condition could be harmed.***

Our ability to increase our revenue depends on our ability to attract, motivate, and retain qualified sales, engineering and other key employees, including our management. These positions may require candidates with specific backgrounds in software and the storage industry, and competition for employees with such expertise is intense. We have from time to time experienced, and we expect to continue to experience, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. To the extent that we are successful in hiring to fill these positions, we may need a significant amount of time to train new employees before they are effective and efficient in performing their jobs. Further, we face new challenges regarding workforce planning, employee expectations regarding the ability to work from home or remotely and maintaining employee productivity, as well as higher employee turnover and slower hiring rates. If we are unable to adequately address these challenges, our ability to recruit and retain employees and to ensure employee productivity could be negatively affected. From time to time, there may be changes in our management team, which could create short term uncertainty. All of our employees, including members of our management team and executive officers, are generally employed on an at-will basis, which means that they could terminate their employment with us at any time. If we are unable to attract, motivate and retain qualified sales, engineering and other key employees, including our management or if they are unable to work effectively, our business and operating results could suffer.

***If we fail to adequately expand and optimize our sales force, our growth will be impeded.***

We need to continue to expand and optimize our sales organization in order to grow our customer base and our business. We plan to continue to expand and train our sales force, both domestically and internationally. We must design and implement effective sales incentive programs, and it can take time before new sales representatives are fully trained and productive. We must adapt our sales processes for new sales and marketing approaches, including those required by our shift to subscription services and the changes resulting from evolving economic and budgetary constraints. If we are unable to hire, develop and retain qualified sales personnel or if new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, we may not be able to realize the expected benefits of these investments or increase our revenue and our business and operating results could suffer.

***Our company culture has contributed to our success, and if we cannot maintain this culture as we grow, we could lose the innovation, creativity and teamwork fostered by our culture, and our business may be harmed.***

We believe that our company culture has been a critical contributor to our success. Our culture fosters innovation, creativity, teamwork, passion for customers and focus on execution, and facilitates critical knowledge transfer and knowledge sharing. In particular, we believe that the difference between our sales, support and engineering cultures and those of incumbent vendors, is a key competitive advantage and differentiator for our customers and partners. As we grow and change or are required to adapt to changes in business operations, including expectations around work location, we may find it difficult to maintain these important aspects of our company culture, which could limit our ability to innovate and operate effectively. Any failure to preserve our culture could also negatively affect our ability to retain and recruit personnel, continue to perform at current levels or execute on our business strategy.

***Our long-term success depends, in part, on sales outside of the United States, which subjects us to costs and risks associated with international operations.***

We maintain operations outside of the United States, which we have been expanding and intend to continue to expand in the future. As a company headquartered in the United States, conducting and expanding international operations subjects us to costs and risks that we may not generally face in the United States, including:

- exposure to foreign currency exchange rate risk;
- difficulties in collecting payments internationally;
- managing and staffing international operations;
- public health pandemics or epidemics;
- establishing relationships with channel partners in international locations;

- increased travel, infrastructure and legal compliance costs associated with international locations;
- requirements to comply with a wide variety of laws and regulations associated with international operations, including taxes, customs and licensing requirements;
- significant fines, penalties and collateral consequences if we or our partners fail to comply with anti-bribery laws;
- heightened risk of improper, unfair or corrupt business practices in certain geographies;
- potentially adverse tax consequences, including repatriation of earnings;
- increased financial accounting and reporting burdens and complexities;
- political, social and economic instability abroad, terrorist attacks, war and security concerns in general; and
- reduced or varied protection for intellectual property rights in some countries.

The occurrence of any one of these risks could negatively affect our international operations and, consequently, our business, operating results and financial condition generally.

***Our international operations, as well as tax law changes, could expose us to potentially adverse tax consequences.***

Changes in federal, state, or international tax laws or tax rulings could adversely affect our effective tax rate and our operating results. Due to expansion of our international business activities, any changes in the U.S. taxation of such activities may increase our worldwide effective tax rate and adversely affect our financial condition and operating results. We generally conduct our international operations through wholly owned subsidiaries and report our taxable income in various jurisdictions worldwide based upon our business operations in those jurisdictions. Given proposed tax legislation and other global tax developments, we continue to evaluate our corporate structure and intercompany relationships. Future changes to U.S. and global tax laws may adversely impact our effective tax rate.

The Tax Cuts and Jobs Act of 2017 amendments to Internal Revenue Code (IRC) Section 174 require that specific research and experimental expenditures be capitalized and amortized over five years if incurred in the U.S. or fifteen years if incurred in a foreign jurisdiction beginning in our fiscal 2023. Although Congress is considering legislation that would defer, modify or repeal this capitalization and amortization requirement, the possibility that this will happen is uncertain. If this requirement is not deferred, modified or repealed, we may continue to incur additional cash taxes.

Our intercompany relationships are, and after the implementation of any changes to our corporate structure will continue to be, subject to complex transfer pricing regulations administered by taxing authorities in various jurisdictions. The relevant taxing authorities may disagree with our determinations as to the income and expenses attributable to specific jurisdictions. If such a disagreement were to occur, and our position were not sustained, we could be required to pay additional taxes, interest and penalties, which could result in tax charges, higher effective tax rates, reduced cash flows and lower overall profitability of our operations.

***Third-party claims that we infringe their intellectual property rights could be costly and harm our business.***

There is a substantial amount of intellectual property litigation in the data storage industry, and we may become party to, or threatened with, litigation or other adversarial proceedings regarding our intellectual property rights. The outcome of intellectual property litigation is subject to uncertainties that cannot be adequately quantified in advance. We have been, and may in the future be, subject to claims that we infringe upon the intellectual property rights of other intellectual property holders, particularly as we grow and face increasing competition.

Any intellectual property rights claim against us or our customers, suppliers, and channel partners, with or without merit, could be time-consuming and expensive to litigate or settle, could divert management's resources and attention from operating our business and could force us to acquire intellectual property rights and licenses, which may involve substantial royalty payments. Further, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages, including treble damages and attorneys' fees if we are found to have willfully infringed a patent. An adverse determination also could invalidate our intellectual property rights, prevent us from manufacturing and selling our products and may require that we procure or develop substitute products that do not infringe, which could require significant effort and expense.

We may not be able to re-engineer our products to avoid infringement, and we may have to seek a license for the infringed technology, which may not be available on reasonable terms or at all, may significantly increase our operating expenses or may require us to restrict our business activities in one or more respects. Even if we were able to obtain a license, it could be non-exclusive, which may give our competitors access to the same technologies licensed to us. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business. Any of these events could harm our business and financial condition.

We currently have a number of agreements in effect with our customers, suppliers and channel partners pursuant to which we have agreed to defend, indemnify and hold them harmless from damages and costs which may arise from claims of infringement by our products of third-party patents, trademarks or other proprietary rights. The scope of these indemnity obligations varies but may, in some instances, include indemnification for damages and expenses, including attorneys' fees. Our insurance may not cover intellectual property infringement claims. A claim that our products infringe a third party's intellectual property rights could harm our relationships with our customers, deter future customers from purchasing our products and expose us to costly litigation and settlement expenses. Even if we are not a party to any litigation between a customer and a third party relating to infringement claims by our products, an adverse outcome in any such litigation could make it more difficult for us to defend our products against intellectual property infringement claims in any subsequent litigation in which we are a named party. Any of these results could harm our brand, business and financial condition.

***The success of our business depends in part on our ability to protect and enforce our intellectual property rights.***

We rely on a combination of patent, copyright, service mark, trademark and trade secret laws, as well as confidentiality procedures and contractual restrictions, to establish and protect our proprietary rights, all of which provide only limited protection. We have over 2,500 issued patents and patent applications in the United States and foreign countries. We cannot assure investors that future patents issued to us, if any, will give us the protection that we seek, if at all, or that any patents issued to us will not be challenged, invalidated, circumvented or held to be unenforceable. Our issued and future patents may not provide sufficiently broad protection or may not be enforceable. Further, the laws of certain foreign countries do not provide the same level of protection of corporate proprietary information and assets such as intellectual property, trademarks, trade secrets, know-how and records, as the laws of the United States. For instance, the legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection. As a result, we may encounter significant problems in protecting and defending our intellectual property or proprietary rights abroad.

Changes to the intellectual property law in the United States and other jurisdictions could also diminish the value of our patents and patent applications or narrow the scope of our patent protection, among other intellectual property rights. We cannot be certain that the steps we have taken will prevent theft, unauthorized use or the reverse engineering of our proprietary information and other intellectual property, including technical data, manufacturing processes, data sets or other sensitive information. Moreover, others may independently develop technologies that are competitive to ours or that infringe our intellectual property. Furthermore, any of our trademarks may be challenged by others or invalidated through administrative process or litigation.

Protecting against the unauthorized use of our intellectual property, products and other proprietary rights is expensive and difficult. Litigation may be necessary in the future to enforce or defend our intellectual property rights or to determine the validity and scope of the proprietary rights of others. Any such litigation could result in substantial costs and diversion of management's resources and attention, either of which could harm our business, operating results and financial condition. Further, many of our current and potential competitors have the ability to dedicate substantially greater resources than us to defend intellectual property infringement claims and enforce their intellectual property rights. Accordingly, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. Effective patent, trademark, service mark, copyright and trade secret protection may not be available in every country in which our products are available. An inability to adequately protect and enforce our intellectual property and other proprietary rights could harm our business and financial condition.

***Our use of open source software could impose limitations on our ability to commercialize our products.***

We use open source software in our products and expect to continue to use open source software in the future. Although we monitor our use of open source software, the terms of many open source licenses have not been interpreted by U.S. or foreign courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market our products. From time to time, we may face claims from third parties claiming ownership of, or demanding release of, the open source software or derivative works that we have developed using such software, which could include our proprietary source code, or otherwise seeking to enforce the terms of the applicable open source license. These claims could result in litigation and could require us to make our software source code freely available, seek licenses from third parties in order to continue offering our products for certain uses or cease offering the implicated solutions unless and until we can re-engineer them to avoid infringement. This re-engineering process could require significant additional research and development resources, and we may be required to discontinue providing some of our software if re-engineering cannot be accomplished on a timely basis, any of which could harm our business, operating results and financial condition.

***Failure to comply with governmental laws and regulations could harm our business.***

Our business is subject to regulation by various federal, state, local and foreign governmental agencies, including agencies responsible for monitoring and enforcing employment and labor laws, workplace safety, product safety, environmental laws, consumer protection laws, anti-bribery laws, import/export controls, federal securities laws and tax laws and regulations. In certain jurisdictions, these regulatory requirements may be more stringent than in the United States. For example, the European Union has adopted certain directives to facilitate the recycling of electrical and electronic equipment sold in the European Union, including the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment directive and the Waste Electrical and Electronic Equipment directive.

Changes in applicable laws, regulations and standards could harm our business, operating results and financial condition. For example, we have been subject to the EU General Data Protection Regulation, or GDPR, since May 2018 and to the California Consumer Privacy Act (CCPA) since January 2020. These and potentially other future privacy regulations may require us to make further changes to our policies and procedures in the future beyond what we have already done. Our business could be impacted, to some extent, by the United Kingdom's exit from the European Union and related changes in law and regulation. We made changes to our data protection compliance program in relation to data privacy regulations and will continue to monitor the implementation and evolution of global data protection regulations, but if we are not compliant with such privacy regulations, we may be subject to significant fines and our business may be harmed. In addition, the CCPA places additional requirements on the handling of personal data and is currently subject to a revision and update process. The potential effects of this legislation are far-reaching and may require us to modify our data processing practices and policies and to incur substantial costs and expenses. Customers may choose to implement technological solutions to comply with such regulations that impact the performance and competitiveness of our products and solutions.

Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory product recalls, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties or injunctions. If any governmental sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, operating results and financial condition could be harmed. Even the perception of privacy concerns, whether or not valid, may harm our reputation and inhibit competitiveness and adoption of our products by current and future customers. In addition, responding to any action will likely result in a significant diversion of management's attention and resources and an increase in professional fees. Enforcement actions and sanctions could harm our business, operating results and financial condition.

***Governmental regulations affecting the import or export of products could negatively affect our revenue.***

The U.S. and various foreign governments have imposed controls, export license requirements and restrictions on the import or export of some technologies, especially encryption technology, as well as laws relating to forced labor and conflict minerals. From time to time, governmental agencies have proposed additional regulation of encryption technology, such as requiring the escrow of imports or exports. If we fail to obtain required import or export approval for our products or its various components, or to timely provide requested documentation, our international and domestic sales could be harmed and our revenue may be adversely affected. In many cases, we rely on vendors and channel partners to handle logistics associated with the import and export of our products, so our visibility and control over these matters may be limited. In addition, failure to comply with such regulations could result in penalties, costs and restrictions on export privileges, which could harm our business, operating results and financial condition.

***We may acquire other businesses which could require significant management attention, disrupt our business, dilute stockholder value, and adversely affect our operating results.***

We may, from time to time, acquire complementary products, technologies or businesses, such as our acquisitions of Portworx in October 2020 and Compuverde AB in April 2019. We also may enter into relationships with other businesses in order to expand our product offerings, which could involve preferred or exclusive licenses, additional channels of distribution or discount pricing or investments in other companies. Negotiating these transactions can be time-consuming, difficult and expensive, and our ability to close these transactions may be subject to third-party or government approvals, which are beyond our control. Consequently, we can make no assurance that these transactions, once undertaken and announced, will close.

These kinds of acquisitions or investments may result in unforeseen operating difficulties and expenditures. In particular, we may encounter difficulties assimilating or integrating the businesses, technologies, products, personnel or operations of acquired companies, particularly if the key personnel of the acquired business choose not to work for us, and we may have difficulty retaining the customers of any acquired business. Acquisitions may also disrupt our ongoing business, divert our resources and require significant management attention that would otherwise be available for development of our business. Any acquisition or investment could expose us to unknown liabilities. Moreover, we cannot assure investors that the anticipated benefits of any acquisition or investment will be realized. In connection with these types of transactions, we may issue additional equity securities that would dilute our stockholders, use cash that we may need in the future to operate our business, incur debt on terms unfavorable to us or that we are unable to repay, incur large charges or substantial liabilities, encounter difficulties integrating diverse business cultures and become subject to adverse tax consequences, substantial depreciation or deferred compensation charges. These challenges related to acquisitions or investments could harm our business and financial condition.

## Risks Related to Our Credit Facility and Notes

### ***Restrictive covenants in the agreement governing our senior secured revolving credit facility may restrict our ability to pursue business strategies.***

In August 2020, we entered into a Credit Agreement with a consortium of financial institutions and lenders that provides for a five-year, senior secured revolving credit facility of \$300.0 million (Credit Facility). We can borrow, repay and re-borrow funds under this Credit Facility at any time, subject to customary borrowing conditions, for general corporate purposes and working capital.

The agreement governing our senior secured revolving Credit Facility limits our ability, among other things, to: incur additional secured indebtedness; sell, transfer, license or dispose of assets; consolidate or merge; enter into transactions with our affiliates; and incur liens. In addition, our senior secured revolving Credit Facility contains financial and other restrictive covenants that limit our ability to engage in activities that may be in our long term best interest, such as, subject to permitted exceptions, making capital expenditures in excess of certain thresholds, making investments, loans and other advances, and prepaying any additional indebtedness while our indebtedness under our senior secured revolving Credit Facility is outstanding. Our failure to comply with financial and other restrictive covenants could result in an event of default, which if not cured or waived, could result in the lenders requiring immediate payment of all outstanding borrowings or foreclosing on collateral pledged to them to secure the indebtedness.

### ***We may be required to expend a significant amount of funds to settle conversions of the Notes or to repurchase the Notes upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the Notes.***

Holders of the Notes will have the right to require us to repurchase all or a portion of their Notes upon the occurrence of a fundamental change at a repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid special interest. In addition, if a make-whole fundamental change (as defined in the indenture for the Notes) occurs prior to the maturity date of the Notes, we will in some cases be required to increase the conversion rate for a holder that elects to convert its Notes in connection with such make-whole fundamental change.

On October 14, 2022, we provided notice to holders of the Notes, electing to settle all conversion on or after October 15, 2022 by a combination settlement (as defined in the indenture for the Notes) with a specified dollar amount (as defined in the indenture for the Notes) of \$1,000 per \$1,000 principal amount of Notes. Upon a conversion or repurchase of the Notes, we will be required to make significant cash payments in respect of the Notes being converted or repurchased. We currently intend to settle the principal amount of the Notes in cash.

In addition, our ability to repurchase or to pay cash upon conversion of the Notes may be limited by law, regulatory authority or agreements governing our future indebtedness. Our failure to repurchase the Notes at a time when the repurchase is required by the indenture governing the Notes or to pay cash upon conversion of the Notes as required by the indenture would constitute a default under the indenture. A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our future indebtedness. If the payment 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 the Notes or to pay cash upon conversion of the Notes.



***Servicing our debt will require a significant amount of cash.***

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

***We may still incur substantially more debt or take other actions that would diminish our ability to make payments on the Notes when due.***

We and our subsidiaries may incur substantial additional debt in the future, subject to the restrictions contained in our future debt instruments, some of which may be secured debt, like the Credit Facility. We are not restricted under the terms of the indenture governing the Notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that could have the effect of diminishing our ability to make payments on the Notes when due. Furthermore, the indenture prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the Notes and the indenture. These and other provisions in the indenture could deter or prevent a third party from acquiring us even when the acquisition may be favorable to holders of the Notes.

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

In connection with the Notes, we entered into capped call transactions with certain financial institutions (the option counterparties). The capped call transactions are expected generally to reduce the potential dilution upon any conversion of the Notes and/or offset any cash payments we are required to make in excess of the principal amount upon conversion of the Notes, with such reduction and/or offset subject to a cap. However, for conversions prior to maturity, the capped call transactions would be settled at their fair value, which may be substantially less than the value of the consideration in excess of the principal amount of the Notes delivered upon such conversion.

In connection with establishing their initial hedges of the capped call transactions, the option counterparties and/or their respective affiliates purchased shares of our common stock and/or entered into various derivative transactions with respect to our common stock. This activity could have increased (or reduced the size of any decrease in) the market price of our common stock or the Notes at that time.

In addition, the option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock in secondary market transactions (and are likely to do so during any observation period related to a conversion of notes or following any repurchase of notes by us on any fundamental change repurchase date or otherwise). This activity could also cause or avoid an increase or a decrease in the price of our common stock or the Notes.

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

## Risks Related to Our Common Stock

***The trading price of our common stock has been and may continue to be volatile, and an active, liquid, and orderly market for our common stock may not be sustained.***

The trading price of our common stock has been, and will likely continue to be, highly volatile. Since shares of our common stock were sold in our initial public offering in October 2015 at a price of \$17.00 per share, our closing stock price has ranged from \$8.76 to \$36.00, through March 24, 2023. Some of the factors, many of which are beyond our control, affecting our volatility may include:

- price and volume fluctuations in the overall stock market from time to time;
- significant volatility in the market price and trading volume of technology companies in general and of companies in our industry;
- actual or anticipated changes in our results of operations or fluctuations in our operating results;
- whether our operating results meet the expectations of securities analysts or investors;
- issuance or new or updated research or reports by securities analysts, including the publication of unfavorable reports or change in recommendation or downgrading of our common stock;
- actual or anticipated developments in our competitors' businesses or the competitive landscape generally;
- litigation involving us, our industry or both;
- general economic conditions and trends, including the lingering impact of the pandemic;
- major catastrophic events;
- sales of large blocks of our stock; or
- departures of key personnel.

In several recent situations where the price of a stock has been volatile, holders of that stock have instituted securities class action litigation against the company that issued the stock. If any of our stockholders were to bring a lawsuit against us, the defense and disposition of the lawsuit could be costly and divert the time and attention of our management and harm our business, operating results and financial condition.

***We cannot guarantee that our share repurchase program will enhance shareholder value, and share repurchases could affect the price of our common stock.***

Our Board of Directors has periodically authorized share repurchases, funded from available working capital, including up to \$250.0 million authorized in March 2023. The repurchase authorization has no fixed end date. Although our Board of Directors has authorized a share repurchase program, this program does not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares. The share repurchase program could affect the price of our common stock, increase volatility and diminish our cash reserves.

***If securities analysts do not publish research or reports about our business, or if they downgrade our stock, the price of our stock could decline.***

The trading market for our common stock will likely be influenced by research and reports that securities or industry analysts publish about us or our business. If one or more of these analysts downgrades our stock, lowers their price target, or publishes unfavorable or inaccurate research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

***We have never paid dividends on our common stock and we do not anticipate paying any cash dividends in the foreseeable future.***

We have never declared or paid any dividends on our common stock. We intend to retain any earnings to finance the operation and expansion of our business, and we do not anticipate paying any cash dividends in the future. As a result, investors may only receive a return on their investment in our common stock if the market price of our common stock increases.

***Provisions in our amended and restated certificate of incorporation and amended and restated bylaws and under Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the price of our common stock.***

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could depress the trading price of our common stock by acting to discourage, delay or prevent a change of control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions:

- establish a classified Board of Directors so that not all members of our Board of Directors are elected at one time;
- authorize the issuance of “blank check” preferred stock that our Board of Directors could issue to increase the number of outstanding shares to discourage a takeover attempt;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- prohibit stockholders from calling a special meeting of our stockholders;
- provide that the Board of Directors is expressly authorized to make, alter or repeal our bylaws; and
- establish advance notice requirements for nominations for elections to our Board of Directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

Additionally, we are subject to 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 and which may discourage, delay, or prevent a change of control of our company.

Any provision of our amended and restated certificate of incorporation, bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

***Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.***

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or our bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. The choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. If a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business and financial condition.

## General Risk Factors

### ***Adverse economic conditions may harm our revenues, profitability and financial condition.***

Our operations and performance depend in part on worldwide economic conditions and the economic health of our current and prospective customers. We have experienced global economic uncertainty, inflation, rising interest rates, financial distress caused by recent or potential bank failures and the associated banking crisis, civil unrest and political and fiscal challenges in the United States and abroad and may continue to experience these events in the future, which can arise suddenly and affect the rate of information technology spending and could adversely affect our customers' ability or willingness to purchase our products and services. For example, the global macroeconomic environment could be negatively affected by the current banking crisis and interest rate hikes, the Russian invasion of Ukraine and the related sanctions and disruptions, the growth rate in the economy of the European Union, China, or the United States, trade relations between the United States and China, the impact of public health epidemics or pandemics, political uncertainty in the Middle East and other geopolitical events. Additionally, the United Kingdom's exit from the European Union is disruptive and remains subject to the successful conclusion of a final withdrawal agreement between the parties. In the absence of such an agreement, there would be no transitional provisions and any exit from the European Union could lead to adverse economic consequences. Weak economic conditions would likely adversely impact our business, operating results and financial condition in a number of ways, including by reducing sales, lengthening sales cycles and lowering prices of our products and services.

The majority of our cash and cash equivalents are primarily invested with large financial institutions that we believe are stable and of high quality. Such deposits exceed federally insured limits. If such institutions were to fail, we could lose all or a portion of those amounts held in excess of such insurance limitations. While the FDIC continues to address the situation with SVB and other similarly situated banking institutions, the risk of loss in excess of insurance limitations has generally increased.

### ***Our business is subject to the risks of earthquakes, fires, floods and other natural catastrophic events, and to interruption by man-made factors such as war, computer viruses or terrorism or by the impact of public health epidemics or pandemics.***

We and our suppliers have operations in locations, including our headquarters in California, that are subject to earthquakes, fires, floods and other natural catastrophic events, such as severe weather and geological events, which could disrupt our operations or the operations of our customers and suppliers. Our customers affected by a natural disaster could postpone or cancel orders of our products, which could negatively impact our business. Moreover, should any of our key suppliers fail to deliver components to us as a result of a natural disaster, we may be unable to purchase these components in necessary quantities or may be forced to purchase components in the open market at significantly higher costs. We may also be forced to purchase components in advance of our normal supply chain demand to avoid potential market shortages. Our business interruption insurance may be insufficient to compensate us for losses due to a significant natural disaster or due to man-made factors. Any natural catastrophic events may also prevent our employees from being able to reach our offices in any jurisdiction around the world, and therefore impede our ability to conduct business as usual.

In addition, man-made factors, such as acts of war, terrorism or malicious computer viruses, and public health epidemics or pandemics, could cause disruptions in our or our customers' businesses or the economy as a whole. To the extent that these disruptions result in delays or cancellations of customer orders or the deployment of our products, our business, operating results and financial condition could be harmed.

### **Item 1B. Unresolved Staff Comments.**

Not applicable.

### **Item 2. Properties.**

Our corporate headquarters are located in Mountain View, California. We also maintain offices in multiple locations in the United States and internationally in Africa, Asia, Australia, Europe, and North and South America. We lease all of our facilities and do not own any real property. We believe that our facilities are adequate to meet our needs for the immediate future, and that, should it be needed, suitable additional space will be available to accommodate expansion of our operations.

**Item 3. Legal Proceedings.**

The information set forth under the "Legal Matters" subheading in Note 8 of our Notes to Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K is incorporated herein by reference.

In addition, we may from time to time, be involved in various legal proceedings arising from the normal course of business, and an unfavorable resolution of any of these matters could materially affect our future results of operations, cash flows or financial position.

**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, which we refer to as our "common stock", trades publicly on the New York Stock Exchange (NYSE) under the ticker symbol "PSTG."

#### Holders of Record

As of March 24, 2023, there were 37 holders of record of our common stock. This figure does not include a substantially greater number of "street name" holders or beneficial holders of our common stock whose shares are held of record by banks, brokers and other financial institutions.

#### Dividend Policy

We have never declared or paid cash dividends on our common stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business and do not anticipate paying any dividends in the foreseeable future. Any future determination to declare dividends will be made at the discretion of our Board of Directors, subject to applicable laws, and will depend on our financial condition, operating results, capital requirements, general business conditions and other factors that our Board of Directors may deem relevant.

#### Purchases of Equity Securities by the Issuer

The following table summarizes our stock repurchase activity for the fourth quarter of fiscal 2023 (in thousands except for price per share):

| Period                              | Average Price Paid per Share | Total Number of Shares Purchased as Part of Share Repurchase Program <sup>(1)</sup> | Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Program <sup>(1)</sup> |
|-------------------------------------|------------------------------|---|--|
| November 7, 2022 - December 4, 2022 | \$ —                         | —   | \$ 98,544  |
| December 5, 2022 - January 1, 2023  | \$ 28.13                     | 1,581   | \$ 54,066  |
| January 2, 2023 - February 5, 2023  | \$ 27.33                     | 841   | \$ 31,088  |

<sup>(1)</sup> In March 2022, our Board of Directors authorized additional share repurchases of up to \$250.0 million of our outstanding common stock under our share repurchase program. In March 2023, our Board of Directors authorized additional share repurchases of up to \$250.0 million of our outstanding common stock. See "Liquidity and Capital Resources—Share Repurchase Program" included under Part II, Item 7 in this Annual Report.

The following table summarizes our shares of restricted common stock that were delivered by certain employees upon vesting of equity awards to satisfy tax withholding requirements for the fourth quarter of fiscal 2023 (in thousands except for price per share):

| Period                              | Average Price per Share Delivered | Total Number of Shares Delivered to Satisfy Tax Withholding Requirements | Approximate Dollar Value of Shares Delivered to Satisfy Tax Withholding Requirements |
|-------------------------------------|-----------------------------------|--|--|
| November 7, 2022 - December 4, 2022 | \$ 28.36                          | 4  | \$ 112   |
| December 5, 2022 - January 1, 2023  | \$ 27.52                          | 122  | \$ 3,359   |
| January 2, 2023 - February 5, 2023  | \$ —                              | —  | \$ —   |

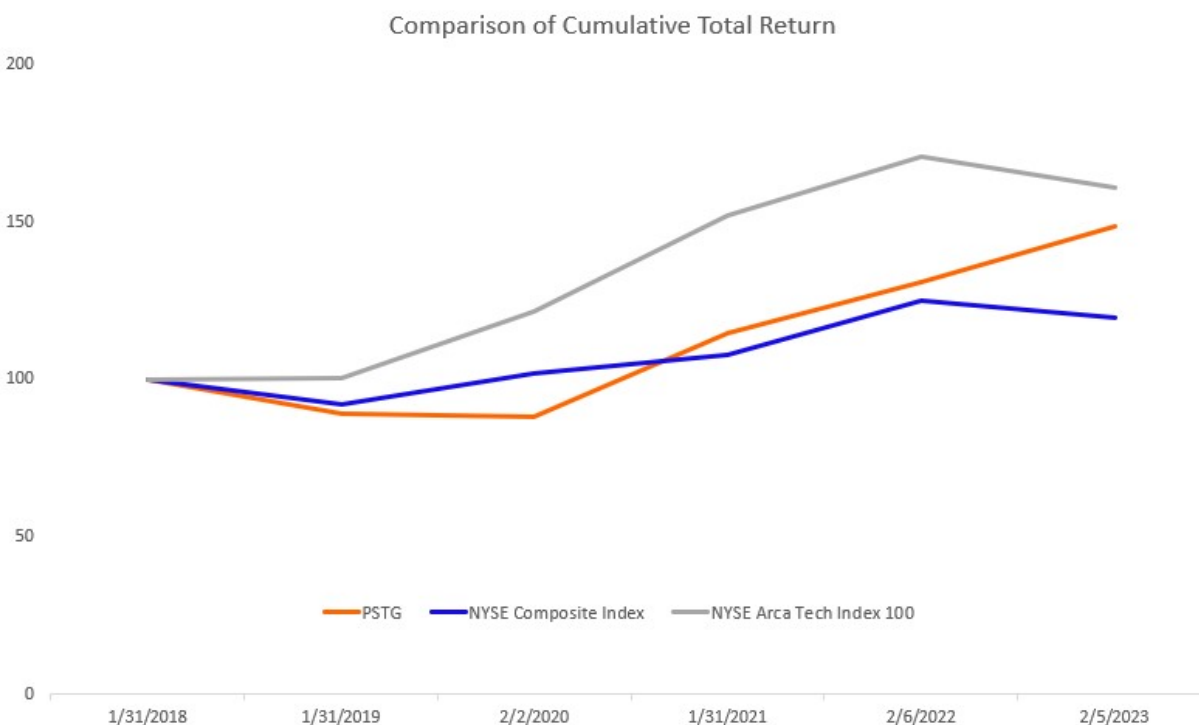
## Trading Plans

Our insider trading policy permits directors, officers, and other employees covered under the policy to establish, subject to certain conditions and limitations set forth in the policy, written trading plans which are intended to comply with Rule 10b5-1 under the Exchange Act, which permits automatic trading of our common stock or trading of our common stock by an independent person (such as a stockbroker) who is not aware of material, nonpublic information at the time of the trade.

## Stock Performance Graph and Cumulative Total Return

*This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of Pure Storage, Inc. under the Securities Act or the Exchange Act.*

The following graph compares the cumulative total return to stockholders on our common stock relative to the cumulative total returns of the NYSE Composite Index and NYSE Arca Tech 100 Index for the five years ended February 5, 2023. The graph assumes that \$100 (with reinvestment of all dividends) was invested in our common stock and in each index on January 31, 2018 and assumes the reinvestment of any dividends. The returns shown are based on historical results and are not intended to suggest future performance.



Item 6. [Reserved]



## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Investors should read the following discussion and analysis of our financial condition and results of operations together with the section titled "Selected Consolidated Financial Data" and the consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed in the section titled "Risk Factors" and in other parts of this Annual Report on Form 10-K. See also the section titled "Note Regarding Forward-Looking Statements" in this report. Our fiscal year end is the first Sunday after January 30.

### Overview

Data is foundational to our customers' business transformation, and we are focused on delivering innovative and disruptive data storage, products and services that enable customers to maximize the value of their data.

We are a global leader in data storage and management with a mission to redefine the storage experience by simplifying how people consume and interact with data. Our vision integrates our foundation of simplicity and reliability with three major market trends that are impacting all organizations large and small: (1) adoption of the cloud operating model everywhere; (2) the increase of modern cloud-native applications; and (3) the shift to modernizing today's data infrastructure with all-flash.

Our products and subscription services support a wide range of structured and unstructured data, at scale and across any data workloads in hybrid and public cloud environments, and include mission-critical production, test and development, analytics, disaster recovery, and backup and recovery.

### Recent Developments

- In May 2022, we released *Pure Fusion* for general availability which enables enterprises and managed service providers (MSPs) to implement a cloud operating model by automating and orchestrating their data storage environment and offer storage services to customers and developers through application programming interfaces (APIs), dramatically accelerating developer workflow.
- In June 2022, we introduced a number of new portfolio and service offerings at our annual user conference, Pure//Accelerate® techfest22:
  - The new *FlashBlade//S* family of products, built with a new modular architecture that shares components with Pure's industry leading *FlashArray*. The highly flexible, all-QLC system combines performance and cost effectiveness to address the demands of unstructured data and modern application growth.
  - Expansion of the *Evergreen* family: To advance our leadership in delivering Storage-as-a-Service (STaaS) while supporting customers wherever they are in their journey to embracing flexible delivery models, we expanded our portfolio of *Evergreen* offerings with the introduction of *Evergreen//Flex*. Our portfolio of Evergreen offerings include:
    - *Evergreen//Forever*: Formerly known as *Evergreen Gold*
    - *Evergreen//Flex*, a fleet-level Evergreen subscription, which gives customers a utilization-based consumption model and flexibility to deploy and shift capacity across their fleet over time
    - *Evergreen//One*: Formerly known as *Pure as-a-Service*
- In March 2023, we announced *FlashBlade//E*, a scale-out unstructured data repository built to handle exponential data growth with industry-leading energy efficiency. *FlashBlade//E* is anticipated to be generally available by the end of April 2023 and will be priced at under \$0.20 per gigabyte.

## **Uncertain Macro Environment**

We continue to actively monitor, evaluate and respond to the current uncertain macro environment. We have experienced longer sales cycle and progression for opportunities, most notably with our U.S. enterprise customers.

The macro environment remains unpredictable and our past results may not be indicative of future performance. See "Risk Factors" in Part I, Item 1A for additional details.

## **Components of Results of Operations**

### **Revenue**

We derive revenue primarily from the sale of our storage infrastructure products, *FlashArray* and *FlashBlade*, and subscription services which include our portfolio of *Evergreen* offerings and *Portworx*. Subscription services also include our professional services offerings such as installation and implementation consulting services.

Provided that all other revenue recognition criteria have been met, we typically recognize product revenue upon transfer of control to our customers and the satisfaction of our performance obligations. For *Evergreen//Flex*, product revenue is recognized upon the commencement of the underlying subscription services. Products are typically shipped directly by us to customers, and our channel partners generally do not stock our inventory. We expect our product revenue may vary from period to period based on, among other things, the timing and size of orders and delivery of products and the impact of significant transactions.

We generally recognize revenue from subscription services ratably over the contractual service period and professional services as delivered. We expect our subscription services revenue to increase and continue to grow faster than our product revenue as more customers choose to consume our storage solutions as a service and our existing subscription customers renew and expand their consumption and service levels.

### **Cost of Revenue**

Cost of product revenue primarily consists of costs paid to our third-party contract manufacturers, which includes the costs of our raw material components, and personnel costs associated with our supply chain operations. Personnel costs consist of salaries, bonuses and stock-based compensation expense. Our cost of product revenue also includes allocated overhead costs, inventory write-offs and product warranty costs, amortization of intangible assets pertaining to developed technology and capitalized internal-use software, and freight. Allocated overhead costs consist of certain employee benefits and facilities-related costs. We expect our cost of product revenue to increase in absolute dollars as our product revenue increases.

Cost of subscription services revenue primarily consists of personnel costs associated with delivering our subscription and professional services, part replacements, allocated overhead costs and depreciation of infrastructure used to deliver our subscription services. We expect our cost of subscription services revenue to increase in absolute dollars, as our subscription services revenue increases.

### **Operating Expenses**

Operating expenses consist of research and development, sales and marketing and general and administrative expenses. Salaries and personnel-related costs, including stock-based compensation expense, are the most significant component of each category of operating expenses. Operating expenses also include allocated overhead costs for employee benefits and facilities-related costs.

*Research and Development.* Research and development expenses consist primarily of employee compensation and related expenses, prototype expenses, depreciation associated with assets acquired for research and development, data center and cloud services costs, third-party engineering and contractor support costs, as well as allocated overhead. We expect our research and development expenses to increase in absolute dollars and it may decrease as a percentage of revenue.

**Sales and Marketing.** Sales and marketing expenses consist primarily of employee compensation and related expenses, sales commissions, marketing programs, travel and entertainment expenses as well as allocated overhead. Marketing programs consist of advertising, events, corporate communications and brand-building activities. We expect our sales and marketing expenses to increase in absolute dollars and it may decrease as a percentage of revenue as we continue to realize efficiencies from scaling our business.

**General and Administrative.** General and administrative expenses consist primarily of employee compensation and related expenses for administrative functions including finance, legal, human resources, facilities, IT and fees for third-party professional services as well as amortization of intangible assets pertaining to defensive technology patents and allocated overhead. We expect our general and administrative expenses to increase in absolute dollars and it may decrease as a percentage of revenue as we continue to drive operational excellence.

***Other Income (Expense), Net***

Other income (expense), net consists primarily of interest income related to cash, cash equivalents and marketable securities, interest expense related to our debt and gains (losses) from foreign currency transactions

***Provision for Income Taxes***

Provision for income taxes consists primarily of income taxes in certain foreign jurisdictions in which we conduct business and state income taxes in the United States. Our foreign subsidiaries earn a profit margin based upon transfer pricing principles which require an arm's length return. Our foreign subsidiaries' sales and marketing expenses are expected to increase over time as we grow, resulting in higher pre-tax foreign earnings and higher foreign income taxes.

We have recorded no U.S. federal current income tax and provided a full valuation allowance for U.S. deferred tax assets, which includes net operating loss carryforwards and tax credits related primarily to research and development. We expect to maintain this full valuation allowance for the foreseeable future as it is more likely than not that the assets will not be realized based on our history of losses.

## Results of Operations

### Basis of Presentation

We operate using a 52/53 week fiscal year ending on the first Sunday after January 30. Fiscal 2021 and 2023 were both 52-week years that ended on January 31, 2021 and February 5, 2023, respectively. Fiscal 2022 was a 53-week year that ended on February 6, 2022. Unless otherwise stated, all dates refer to our fiscal years.

### Year Over Year Comparisons

The following tables set forth our results of operations for the periods presented in dollars and as a percentage of total revenue (in thousands):

### Revenue

|                               | Fiscal Year Ended |              | Change     |      | Fiscal Year Ended |              | Change     |      |
|-------------------------------|-------------------|--------------|------------|------|-------------------|--------------|------------|------|
|                               | 2021              | 2022         | \$         | %    | 2022              | 2023         | \$         | %    |
| (in thousands)                |                   |              |            |      |                   |              |            |      |
| Product revenue               | \$ 1,144,098      | \$ 1,442,338 | \$ 298,240 | 26 % | \$ 1,442,338      | \$ 1,792,153 | \$ 349,815 | 24 % |
| Subscription services revenue | 540,081           | 738,510      | 198,429    | 37 % | 738,510           | 961,281      | 222,771    | 30 % |
| Total revenue                 | \$ 1,684,179      | \$ 2,180,848 | \$ 496,669 | 29 % | \$ 2,180,848      | \$ 2,753,434 | \$ 572,586 | 26 % |

Total revenue increased in fiscal 2023 by \$572.6 million, or 26%, compared to fiscal 2022, driven by demand from enterprise, commercial and public sector customers across our entire product and solutions portfolio and key geographies. The increase in product revenue during fiscal 2023 compared to fiscal 2022 was driven by increased sales from our entire portfolio of *FlashArray* and *FlashBlade* products, including *FlashArray//C*, *FlashArray//XL* and *FlashBlade//S*. The increase in subscription services revenue was largely driven by increases in sales of our *Evergreen* subscription services, including *Evergreen//One*, as well as recognition of revenue from previously contracted *Evergreen* subscription services.

Total revenue increased in fiscal 2022 by \$496.7 million, or 29%, compared to fiscal 2021, driven by sales to new and existing enterprise, commercial and public sector customers, with particular strength in the United States, across our entire product and solutions portfolio and key geographies. The increase in product revenue during fiscal 2022 compared to fiscal 2021 was driven by increased sales from our entire portfolio of *FlashArray* and *FlashBlade* solutions, including sales of *FlashArray//C* to a large hyperscaler customer, and repeat sales to existing customers. The increase in subscription services revenue was largely driven by increases in sales of our *Evergreen* subscription services, including *Evergreen//One*, as well as increased *Portworx* revenue.

During fiscal 2023 compared to fiscal 2022, total revenue in the United States grew by 25% from \$1.6 billion to \$2.0 billion and total rest of the world revenue grew by 30% from \$600.8 million to \$781.7 million. During fiscal 2022 compared to fiscal 2021, total revenue in the United States grew by 32% from \$1.2 billion to \$1.6 billion and total rest of the world revenue grew by 23% from \$488.8 million to \$600.8 million.

### Subscription Annual Recurring Revenue (ARR)

We use Subscription ARR as a key business metric to evaluate the performance of our subscription services. Subscription ARR should be viewed independently of revenue, deferred revenue and remaining performance obligations and is not intended as a substitute for any of these items.

Subscription ARR is calculated as the total annualized contract value of all active customer subscription agreements at the end of a fiscal quarter, plus on-demand revenue for the quarter multiplied by four. Contract values are established prior to any adjustments made in accordance with ASC 606.

The following table sets forth our Subscription ARR for the periods presented (dollars in thousands):

|                                       | At the End of |              | Year-over-Year Growth |
|---------------------------------------|---------------|--------------|-----------------------|
|                                       | Fiscal 2022   | Fiscal 2023  | %                     |
| Subscription annual recurring revenue | \$ 848,776    | \$ 1,101,301 | 30 %                  |

### **Deferred Revenue**

Deferred revenue primarily consists of amounts that have been invoiced but have not yet been recognized as revenue including performance obligations pertaining to subscription services. The current portion of deferred revenue represents the amounts that are expected to be recognized as revenue within one year of the consolidated balance sheet dates.

Changes in total deferred revenue during the periods presented are as follows (in thousands):

|                                 | Fiscal Year Ended |              |
|---------------------------------|-------------------|--------------|
|                                 | 2022              | 2023         |
| Beginning balance               | \$ 843,697        | \$ 1,079,872 |
| Additions                       | 937,510           | 1,248,417    |
| Recognition of deferred revenue | (701,335)         | (942,639)    |
| Ending balance                  | \$ 1,079,872      | \$ 1,385,650 |

Revenue recognized during fiscal 2022 and 2023 from deferred revenue at the beginning of each respective period was \$442.7 million and \$567.8 million.

### **Remaining Performance Obligations**

Total remaining performance obligations (RPO) which is total contracted but not recognized revenue was \$1.8 billion at the end of fiscal 2023. RPO consists of both deferred revenue and non-cancelable amounts that are expected to be invoiced and recognized as revenue in future periods. Product orders are generally cancelable until delivery has occurred, and as such unfulfilled product orders are excluded from RPO. Cancelable orders will fluctuate depending on numerous factors. Of the \$1.8 billion RPO at the end of fiscal 2023, we expect to recognize approximately 47% over the next 12 months, and the remainder thereafter. RPO is expected to increase as our subscription services business grows over time.

## Cost of Revenue and Gross Margin

|  | Fiscal Year Ended |            | Change     |      | Fiscal Year Ended |            | Change     |      |
|--|-------------------|------------|------------|------|-------------------|------------|------------|------|
|  | 2021              | 2022       | \$         | %    | 2022              | 2023       | \$         | %    |
| <b>(in thousands)</b>                          |                   |            |            |      |                   |            |            |      |
| Product cost of revenue                        | \$ 348,986        | \$ 471,565 | \$ 122,579 | 35 % | \$ 471,565        | \$ 559,548 | \$ 87,983  | 19 % |
| Product stock-based compensation               | 4,001             | 6,334      | 2,333      | 58 % | 6,334             | 10,245     | 3,911      | 62 % |
| Total expenses                                 | \$ 352,987        | \$ 477,899 | \$ 124,912 | 35 % | \$ 477,899        | \$ 569,793 | \$ 91,894  | 19 % |
| % of Product revenue                           | 31 %              | 33 %       |            |      | 33 %              | 32 %       |            |      |
|  |                   |            |            |      |                   |            |            |      |
| Subscription services cost of revenue          | \$ 167,289        | \$ 209,190 | \$ 41,901  | 25 % | \$ 209,190        | \$ 263,365 | \$ 54,175  | 26 % |
| Subscription services stock-based compensation | 14,979            | 21,240     | 6,261      | 42 % | 21,240            | 22,630     | 1,390      | 7 %  |
| Total expenses                                 | \$ 182,268        | \$ 230,430 | \$ 48,162  | 26 % | \$ 230,430        | \$ 285,995 | \$ 55,565  | 24 % |
| % of Subscription services revenue             | 34 %              | 31 %       |            |      | 31 %              | 30 %       |            |      |
|  |                   |            |            |      |                   |            |            |      |
| Total cost of revenue                          | \$ 535,255        | \$ 708,329 | \$ 173,074 | 32 % | \$ 708,329        | \$ 855,788 | \$ 147,459 | 21 % |
| % of Revenue                                   | 32 %              | 32 %       |            |      | 32 %              | 31 %       |            |      |
|  |                   |            |            |      |                   |            |            |      |
| Product gross margin                           | 69 %              | 67 %       |            |      | 67 %              | 68 %       |            |      |
| Subscription services gross margin             | 66 %              | 69 %       |            |      | 69 %              | 70 %       |            |      |
| Total gross margin                             | 68 %              | 68 %       |            |      | 68 %              | 69 %       |            |      |

Cost of revenue increased by \$147.5 million, or 21%, for fiscal 2023 compared to fiscal 2022. The increase in product cost of revenue was primarily attributable to increased sales and, to a lesser extent, higher component and logistics costs due to supply chain environment. The increase in subscription services cost of revenue was primarily attributable to supporting our growing *Evergreen* subscription installed base, including *Evergreen//One*, and *Portworx*.

The slight increase in product gross margin for fiscal 2023 compared to fiscal 2022 was largely as a result of sales of *FlashArray//C* to a large hyperscaler in fiscal 2022 that were at lower product gross margins. Sales of *FlashArray//S* as well as strength in *FlashArray//X* pricing also contributed to higher product gross margins during fiscal 2023, partially offset by higher component costs due to supply chain constraints and warranty reserves. The slight increase in subscription services gross margin for fiscal 2023 compared to fiscal 2022 was driven by increased sales of *Evergreen//One*, higher renewals in *Evergreen* subscriptions, and increasing economies of scale.

Cost of revenue increased by \$173.1 million, or 32%, for fiscal 2022 compared to fiscal 2021. The increase in product cost of revenue was primarily attributable to increased sales. Other factors include higher component and logistics costs due to supply chain environment, and an increase in the amortization of acquired intangible assets. The increase in subscription services cost of revenue was primarily attributable to supporting our growing *Evergreen* subscription installed base, including *Evergreen//One*, and *Portworx*.

The decline in product gross margin for fiscal 2022 compared to fiscal 2021 was impacted by the sale of *FlashArray//C* to a large hyperscaler, and to a lesser extent higher component and logistics costs due to supply chain environment, as well as increased sales of *FlashArray//C* and *FlashBlade* products which generally have a modestly lower gross margin compared to our other *FlashArray* products. The increase in subscription services gross margin for fiscal 2022 compared to fiscal 2021 was driven by increased sales of *Evergreen//One* and higher renewals in *Evergreen* subscriptions, and increasing economies of scale.

## Operating Expenses

### Research and Development

|                          | Fiscal Year Ended |            | Change     |      | Fiscal Year Ended |            | Change     |      |
|--------------------------|-------------------|------------|------------|------|-------------------|------------|------------|------|
|                          | 2021              | 2022       | \$         | %    | 2022              | 2023       | \$         | %    |
| <b>(in thousands)</b>    |                   |            |            |      |                   |            |            |      |
| Research and development | \$ 363,247        | \$ 439,671 | \$ 76,424  | 21 % | \$ 439,671        | \$ 530,834 | \$ 91,163  | 21 % |
| Stock-based compensation | 117,220           | 142,264    | 25,044     | 21 % | 142,264           | 161,694    | 19,430     | 14 % |
| Total expenses           | \$ 480,467        | \$ 581,935 | \$ 101,468 | 21 % | \$ 581,935        | \$ 692,528 | \$ 110,593 | 19 % |
| % of Total revenue       | 29 %              | 27 %       |            |      | 27 %              | 25 %       |            |      |

Research and development expense increased by \$110.6 million, or 19%, during fiscal 2023 compared to fiscal 2022, as we continue to innovate and develop technologies to enhance and expand our solutions portfolio. The increase was primarily driven by a \$79.6 million increase in employee compensation and related costs, which included a \$19.4 million increase in stock-based compensation expense. The remainder of the increase was primarily attributable to a \$20.6 million increase in office and facilities-related costs and an \$8.7 million increase in data center and cloud services costs. Research and development expense as a percentage of total revenue decreased in fiscal 2023 compared to fiscal 2022 primarily due to our global expansion of research and development centers.

Research and development expense increased by \$101.5 million, or 21%, during fiscal 2022 compared to fiscal 2021, primarily driven by a \$71.0 million increase in employee compensation and related costs, which included a \$25.0 million increase in stock-based compensation expense. The remainder of the increase was primarily attributable to a \$14.2 million increase in data center and cloud services costs and a \$9.3 million increase in depreciation expense from property and equipment due, in part, to revising our estimated useful lives of test equipment and certain computer equipment and software during the first quarter of fiscal 2021.

### Sales and Marketing

|                          | Fiscal Year Ended |            | Change    |      | Fiscal Year Ended |            | Change    |      |
|--------------------------|-------------------|------------|-----------|------|-------------------|------------|-----------|------|
|                          | 2021              | 2022       | \$        | %    | 2022              | 2023       | \$        | %    |
| <b>(in thousands)</b>    |                   |            |           |      |                   |            |           |      |
| Sales and marketing      | \$ 650,766        | \$ 727,562 | \$ 76,796 | 12 % | \$ 727,562        | \$ 811,102 | \$ 83,540 | 11 % |
| Stock-based compensation | 65,248            | 71,439     | 6,191     | 9 %  | 71,439            | 72,507     | 1,068     | 1 %  |
| Total expenses           | \$ 716,014        | \$ 799,001 | \$ 82,987 | 12 % | \$ 799,001        | \$ 883,609 | \$ 84,608 | 11 % |
| % of Total revenue       | 43 %              | 37 %       |           |      | 37 %              | 32 %       |           |      |

Sales and marketing expense increased by \$84.6 million, or 11%, during fiscal 2023 compared to fiscal 2022, primarily due to an increase of \$51.0 million in employee compensation and related costs and a \$34.0 million increase in marketing and travel spend. Sales and marketing expense as a percentage of total revenue decreased in fiscal 2023 compared to fiscal 2022 primarily due to revenue growth and, to a lesser extent, lower sales commissions.

Sales and marketing expense increased by \$83.0 million, or 12%, during fiscal 2022 compared to fiscal 2021, primarily due to an increase of \$62.7 million in employee compensation and related costs, which included a \$24.7 million increase in sales commission expense, and a \$14.3 million increase in marketing and travel spend due to the gradual reduction in COVID-19 restrictions.

### General and Administrative

|                            | Fiscal Year Ended |            | Change   |      | Fiscal Year Ended |            | Change    |      |
|----------------------------|-------------------|------------|----------|------|-------------------|------------|-----------|------|
|                            | 2021              | 2022       | \$       | %    | 2022              | 2023       | \$        | %    |
| <i>(in thousands)</i>      |                   |            |          |      |                   |            |           |      |
| General and administrative | \$ 141,581        | \$ 144,295 | \$ 2,714 | 2 %  | \$ 144,295        | \$ 177,455 | \$ 33,160 | 23 % |
| Stock-based compensation   | 40,896            | 45,686     | 4,790    | 12 % | 45,686            | 60,541     | 14,855    | 33 % |
| Total expenses             | \$ 182,477        | \$ 189,981 | \$ 7,504 | 4 %  | \$ 189,981        | \$ 237,996 | \$ 48,015 | 25 % |
| % of Total revenue         | 11 %              | 9 %        |          |      | 9 %               | 9 %        |           |      |

General and administrative expense increased by \$48.0 million, or 25%, during fiscal 2023 compared to fiscal 2022 primarily due to employee compensation and related costs driven by increased headcount as we continue to scale and support the growth of our business.

General and administrative expense increased by \$7.5 million, or 4%, during fiscal 2022 compared to fiscal 2021. The increase was primarily driven by an increase of \$16.4 million in employee compensation and related costs driven by increased headcount, partially offset by a \$8.5 million decrease in office and facilities-related costs primarily attributable to the exit of certain facilities in fiscal 2021.

### Restructuring and Other

During fiscal 2021, we recognized \$31.0 million of restructuring and other costs related to one-time involuntary termination benefit costs associated with workforce realignment plans, the cease use of certain lease facilities, and incremental costs directly related to the COVID-19 pandemic.

### Other Income (Expense), Net

|                             | Fiscal Year Ended |             | Change      |      | Fiscal Year Ended |          | Change    |     |
|-----------------------------|-------------------|-------------|-------------|------|-------------------|----------|-----------|-----|
|                             | 2021              | 2022        | \$          | %    | 2022              | 2023     | \$        | %   |
| <i>(in thousands)</i>       |                   |             |             |      |                   |          |           |     |
| Other income (expense), net | \$ (9,127)        | \$ (30,098) | \$ (20,971) | (1)% | \$ (30,098)       | \$ 8,295 | \$ 38,393 | — % |
| % of Total revenue          | (1)%              | (1)%        |             |      | (1)%              | — %      |           |     |

Other income (expense), net increased during fiscal 2023 compared to fiscal 2022 primarily due to decrease in interest expense following the repayment of the outstanding balance on the revolving credit facility and the adoption of ASU 2020-06 in the first quarter of fiscal 2023. The adoption of ASU 2020-06 resulted in the elimination of the debt discount related to the conversion option of our convertible senior notes that was previously accreted to interest expense over its term. These decreases were partially offset by an increase in interest income on cash equivalents and marketable securities resulting from a rising interest rate environment.

We expect interest income to decline in fiscal 2024 year-over-year as a result of cash that will be used to repay our convertible senior notes in April 2023.

Other income (expense), net decreased during fiscal 2022 compared to fiscal 2021 primarily attributable to an increase in net foreign exchange losses as the U.S. dollar strengthened relative to certain foreign currencies, a decrease in interest income on marketable securities resulting from a lower interest rate environment, and higher interest expense due to borrowings under the revolving credit facility.



*Provision for Income Taxes*

|                            | Fiscal Year Ended |           | Change   |      | Fiscal Year Ended |           | Change   |      |
|----------------------------|-------------------|-----------|----------|------|-------------------|-----------|----------|------|
|                            | 2021              | 2022      | \$       | %    | 2022              | 2023      | \$       | %    |
| <b>(in thousands)</b>      |                   |           |          |      |                   |           |          |      |
| Provision for income taxes | \$ 11,916         | \$ 14,763 | \$ 2,847 | 24 % | \$ 14,763         | \$ 18,737 | \$ 3,974 | 27 % |
| % of Total revenue         | 1 %               | 1 %       |          |      | 1 %               | 1 %       |          |      |

Provision for income taxes increased during fiscal 2023 compared to fiscal 2022 primarily due to an increase in U.S. state income taxes arising as a result of research and development capitalization under IRC Section 174.

Provision for income taxes increased during fiscal 2022 compared to fiscal 2021 primarily attributable to an increase in foreign income taxes.

## Liquidity and Capital Resources

At the end of fiscal 2023, we had cash, cash equivalents and marketable securities of \$1.6 billion. Our cash and cash equivalents primarily consist of bank deposits and money market accounts. Our marketable securities generally consist of highly rated debt instruments of the U.S. government and its agencies, debt instruments of highly rated corporations, debt instruments issued by foreign governments, asset-backed securities, and municipal bonds.

We believe our existing cash, cash equivalents, marketable securities and the revolving credit facility will be sufficient to fund our operating and capital needs for at least the next 12 months, including the cash settlement of the principal balance of our convertible senior notes in April 2023 as discussed below. The following table sets forth our non-cancelable contractual obligations and commitments associated with agreements that are enforceable and legally binding at the end of fiscal 2023. Obligations under contracts that we can cancel without a significant penalty are not included.

|   | Payment Due by Period |                     |                |           |                      |
|---|-----------------------|---------------------|----------------|-----------|----------------------|
|   | Total                 | Less Than<br>1 Year | 1-3 Years      | 3-5 Years | More Than<br>5 Years |
|   |                       |                     | (in thousands) |           |                      |
| Debt obligations <sup>(1)</sup>         | \$ 580,091            | \$ 577,363          | \$ 2,728       | \$ —      | \$ —                 |
| Future lease commitments <sup>(2)</sup> | 238,297               | 51,059              | 93,570         | 44,991    | 48,677               |
| Purchase obligations <sup>(3)</sup>     | 445,048               | 317,846             | 98,100         | 29,102    | —                    |
| Total                                   | \$ 1,263,436          | \$ 946,268          | \$ 194,398     | \$ 74,093 | \$ 48,677            |

(1) Consists of (i) principal and interest payments on our convertible senior notes due April 2023, (ii) unused commitment fees on our August 2020 revolving credit facility based on rates in effect on February 5, 2023, and (iii) principal and interest on a five year loan.

(2) Represents aggregate future minimum lease payments under non-cancelable operating and finance leases.

(3) Includes primarily non-cancelable inventory purchase commitments, software service contracts, and hosting arrangements. Purchase orders are not included as they represent authorizations to purchase rather than binding agreements.

Our future capital requirements will depend on many factors including our sales growth, the timing and extent of capital spending to support development efforts, growth of our Evergreen//One offering, the addition or closure of office space, construction of our new headquarters facility, the timing of new product introductions, and our share repurchases. We may continue to enter into arrangements to acquire or invest in complementary businesses, services and technologies, including intellectual property rights. We may seek additional equity or debt financing in the future.

### Convertible Senior Notes

In April 2018, we issued \$575.0 million of 0.125% convertible senior notes due 2023 (the Notes), in a private placement and received proceeds of \$562.1 million, after deducting the underwriters' discounts and commissions. The Notes are unsecured obligations that do not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or the issuance or repurchase of securities by us or any of our subsidiaries. The Notes will mature on April 15, 2023. The Notes are convertible for up to 21,884,155 shares of our common stock at an initial conversion rate of approximately 38.0594 shares of common stock per \$1,000 principal amount, which is equal to an initial conversion price of approximately \$26.27 per share of common stock, subject to adjustment. On October 14, 2022, we provided notice to the holders of the Notes electing to settle all conversions of the Notes with cash up to the principal amount of the Notes and shares for any excess conversion value. Accordingly, we currently intend to settle the principal amount of the Notes, or \$575.0 million, with cash from a combination of sources, including our existing cash, cash equivalents, marketable securities and the revolving credit facility.

In connection with the offering of the Notes, we entered into capped call transactions with certain financial institutions that provide us with the option to purchase up to a total of 21,884,155 shares of our common stock to offset the dilution and/or any cash payments we are required to make in excess of the principal amount of the Notes upon conversion of the Notes at maturity with such offset subject to a cap of \$39.66 per share. See further discussion about our Notes in Note 7 in Part II, Item 8 of this report.

### ***Revolving Credit Facility***

In August 2020, we entered into a Credit Agreement with a consortium of financial institutions and lenders that provides for a five-year, senior secured revolving credit facility of \$300.0 million (Credit Facility). Proceeds from the Credit Facility may be used for general corporate purposes and working capital. The Credit Facility expires, absent default or early termination by us, on the earlier of (i) August 24, 2025 or (ii) 91 days prior to the stated maturity of the convertible senior notes unless, on such date and each subsequent day until the convertible senior notes are paid in full, the sum of our cash, cash equivalents and marketable securities and the aggregate unused commitments then available to us exceed \$625.0 million. The annual interest rates applicable to loans under the Credit Facility are, at our option, equal to either a base rate plus a margin ranging from 0.50% to 1.25% or LIBOR (based on one, three, or six-month interest periods), subject to a floor of 0%, plus a margin ranging from 1.50% to 2.25%. Interest on revolving loans is payable quarterly in arrears with respect to loans based on the base rate and at the end of an interest period in the case of loans based on LIBOR (or at each three-month interval, if the interest period is longer than three months). We are also required to pay a commitment fee on the unused portion of the commitments ranging from 0.25% to 0.40% per annum, payable quarterly in arrears that commenced on September 30, 2020. During March 2021, the ICE Benchmark Administration, the administrator of LIBOR, announced that it will cease publication of LIBOR by June 2023. In March 2023, we amended the Credit Facility to transition LIBOR to the Secured Overnight Financing Rate (SOFR) effective April 1, 2023. The annual interest rate for SOFR borrowings will be equal to term SOFR (based on one, three, or six-month interest periods), subject to a floor of 0%, plus a margin ranging from 1.50% to 2.25%. We do not anticipate that this transition to SOFR will materially impact our liquidity or financial position.

In February 2022, we repaid, in full, the \$250.0 million then outstanding under the Credit Facility. Loans under the Credit Facility are collateralized by substantially all of our assets and subject to certain restrictions and two financial ratios measured as of the last day of each fiscal quarter: a Consolidated Leverage Ratio not to exceed 4.5:1 and an Interest Coverage Ratio not to be less than 3:1. We were in compliance with all covenants under the Credit Facility at the end of fiscal 2023.

### ***Letters of Credit***

At the end of fiscal 2022 and 2023, we had outstanding letters of credit in the aggregate amount of \$6.7 million and \$8.0 million in connection with our facility leases. The letters of credit are collateralized by either restricted cash or the Credit Facility and mature on various dates through September 2030.

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

In August 2019, our Board of Directors approved a stock repurchase program to repurchase up to \$150.0 million of our common stock and in February 2021, an additional \$200.0 million of our common stock, both of which were completed by the end of fiscal 2022. In March 2022, our Board of Directors authorized the repurchase of up to an additional \$250.0 million of our common stock, of which \$31.1 million remaining as of the end of fiscal 2023. In March 2023, our Board of Directors authorized the repurchase of up to an additional \$250.0 million of our common stock. The authorization allows us to repurchase shares of our common stock opportunistically and will be funded from available working capital. Repurchases may be made at management's discretion from time to time on the open market through privately negotiated transactions, transactions structured through investment banking institutions, block purchase techniques, 10b5-1 trading plans, or a combination of the foregoing. The share repurchase program does not obligate us to acquire any of our common stock, has no end date, and may be suspended or discontinued by us at any time without prior notice.

During fiscal 2021, we repurchased and retired 9.5 million shares of common stock at an average purchase price of \$14.17 per share for an aggregate repurchase price of \$135.0 million. During fiscal 2022, we repurchased and retired 8.5 million shares of common stock at an average purchase price of \$23.56 per share for an aggregate repurchase price of \$200.0 million. During fiscal 2023, we repurchased and retired 7.8 million shares of common stock at an average purchase price of \$27.95 per share for an aggregate repurchase price of \$218.9 million. Since the end of fiscal 2023, we have repurchased \$31.1 million of additional shares.

The following table summarizes our cash flows for the periods presented (in thousands):

|   | Fiscal Year Ended |            |            |
|---|-------------------|------------|------------|
|   | 2021              | 2022       | 2023       |
| Net cash provided by operating activities           | \$ 187,641        | \$ 410,127 | \$ 767,234 |
| Net cash used in investing activities               | (418,109)         | (153,283)  | (221,413)  |
| Net cash provided by (used in) financing activities | 200,237           | (127,792)  | (431,166)  |

### ***Operating Activities***

Net cash provided by operating activities substantially increased year-over-year during both fiscal 2022 and 2023. Key factors driving the increase included cash collections from sales of our product and subscription services and improved operating leverage, partially offset by payments to our contract manufacturers, employee compensation, and general corporate operating expenditures.

Net cash provided by operating activities during fiscal 2021 was primarily driven by cash collections from sales of our product and subscription services including certain invoices with extended payment terms and deferral of the employer portion of social security payroll tax under the CARES Act, partially offset by payments to our contract manufacturers, employee compensation, and general corporate operating expenditures.

### ***Investing Activities***

Net cash used in investing activities during fiscal 2023 of \$221.4 million was driven by capital expenditures of \$158.1 million, and net purchases of marketable securities of \$61.3 million.

Net cash used in investing activities during fiscal 2022 of \$153.3 million was driven by capital expenditures of \$102.3 million, and net purchases of marketable securities of \$50.4 million.

Net cash used in investing activities during fiscal 2021 of \$418.1 million was driven by net cash paid for our acquisition of Portworx of \$339.6 million in October 2020, and capital expenditures of \$95.0 million, partially offset by net sales of marketable securities of \$21.5 million.

### ***Financing Activities***

Net cash used in financing activities of \$431.2 million during fiscal 2023 was primarily driven by our repayment of the \$250.0 million outstanding under the Credit Facility, share repurchases of \$219.1 million, and \$19.6 million in tax withholdings on vesting of equity awards, partially offset by \$40.0 million of proceeds from issuance of common stock under our employee stock purchase plan (ESPP), and \$24.8 million of proceeds from the exercise of stock options.

Net cash used in financing activities of \$127.8 million during fiscal 2022 was primarily driven by share repurchases of \$200.2 million, and \$10.8 million in tax withholdings on vesting of equity awards, partially offset by \$48.7 million of proceeds from the exercise of stock options, and \$36.6 million of proceeds from issuance of common stock under our ESPP.

Net cash provided by financing activities of \$200.2 million during fiscal 2021 was primarily driven by \$251.9 million of net proceeds from borrowings primarily under our Credit Facility, \$59.3 million of proceeds from the exercise of stock options, and \$32.4 million of proceeds from issuance of common stock under our ESPP, partially offset by share repurchases of \$135.2 million and \$8.3 million in tax withholdings on vesting of equity awards.

### **Off-Balance Sheet Arrangements**

Through the end of fiscal 2023, we did not have any relationships with any entities or financial partnerships, such as structured finance or special purpose entities established for the purpose of facilitating off-balance sheet arrangements or other purposes.

## **Critical Accounting Policy and Estimates**

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles (GAAP). The preparation of these financial statements requires us to make estimates, judgments, and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. A summary of significant accounting policies applicable to our consolidated financial statements is included in Note 2 of our Notes to Consolidated Financial Statements in Part II, Item 8. We deem an accounting policy to be critical if the nature of the estimate or assumption it incorporates is subject to material level of judgment related to matters that are highly uncertain and changes in those estimates and assumptions are reasonably likely to materially impact our consolidated financial statements.

We evaluate our estimates and assumptions on an ongoing basis. Our estimates and judgments are based on historical experience, forecasted events and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

We believe the accounting policy below has the most significant impact on our consolidated financial statements and require management's most difficult, subjective, or complex judgments.

### ***Revenue Recognition***

Our revenue is derived from sales of our integrated storage hardware and embedded licensed software products and subscription services which also includes support and maintenance and professional services. We enter into contracts with customers that may include combinations of these products and subscription services, resulting in arrangements containing multiple promised performance obligations.

Determining whether our products and subscription services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. For these contracts, we account for individual performance obligations separately if they are distinct.

Revenue is recognized when, or as, control of the promised products or subscription services is transferred to the customer at the transaction price. The transaction price is determined based on the consideration which we will be entitled to in exchange for transferring goods or services to the customer. Transaction price may be adjusted for variable consideration which we estimate by applying the expected value or most likely estimate and subsequently update at each reporting period as additional information become available.

To recognize revenue for the products and subscription services for which control has been transferred, we allocate the transaction price for the contract among the identified performance obligations on a relative standalone selling price (SSP) basis. We establish SSP for most of our products and subscription services based on the observable price of the products or subscription services when sold separately in similar circumstances to similar customers. When the SSP is not directly observable through historical transactions, we estimate SSP based on management judgment by considering available data, such as internal margin objectives, pricing strategies, approved pricing guidelines, market/competitive conditions, historical profitability data, as well as other observable inputs. We establish SSP ranges for our products and subscription services and reassess them periodically.

## **Recent Accounting Pronouncements**

Refer to "Recent Accounting Pronouncements" in Note 2 of our Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk.**

We have operations both within the United States and internationally, and we are exposed to market risk in the ordinary course of our business.

**Interest Rate Risk**

Our cash, cash equivalents and marketable securities primarily consist of bank deposits and money market accounts, highly rated debt instruments of the U.S. government, its agencies, debt instruments of highly rated corporations, debt instruments issued by foreign governments, and asset-backed securities. At the end of fiscal 2022 and 2023, we had cash, cash equivalents and marketable securities of \$1.4 billion and \$1.6 billion. The carrying amount of our cash equivalents reasonably approximates fair value, due to the short maturities of these instruments. The primary objectives of our investment activities are the preservation of capital, the fulfillment of liquidity needs and the fiduciary control of cash and investments. We do not enter into investments for trading or speculative purposes. Our investments are exposed to market risk due to fluctuation in interest rates, which may affect our interest income and the fair value of our investments.

We considered the historical volatility of short-term interest rates and determined that it was reasonably possible that an adverse change of 100 basis points could be experienced in the near term. A hypothetical 1.00% (100 basis points) increase in interest rates would have resulted in a decrease in the fair value of our marketable securities of approximately \$8.5 million as of the end of fiscal 2023.

**Foreign Currency Exchange Risk**

Our sales contracts are primarily denominated in U.S. dollars with a proportionally small number of contracts denominated in foreign currencies. A portion of our operating expenses are incurred outside the United States and denominated in foreign currencies and are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the British pound, Euro and Yen. Additionally, fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our statement of operations. Given the impact of foreign currency exchange rates has not been material to our historical operating results, we have not entered into any derivative or hedging transactions, but we may do so in the future if our exposure to foreign currency exchange should become more significant.

We considered the historical trends in currency exchange rates and determined that it was reasonably possible that adverse changes in exchange rates of 10% for all currencies could be experienced in the near term. These reasonably possible adverse changes in exchange rates of 10% were applied to total monetary assets and liabilities denominated in currencies other than U.S. dollar at the end of fiscal 2023 to compute the adverse impact these changes would have had on our loss before income taxes in the near term. These changes would have resulted in an adverse impact on loss before provision for income taxes of approximately \$9.0 million at the end of fiscal 2023.

Item 8. Financial Statements and Supplementary Data.

PURE STORAGE, INC.  
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Pure Storage, Inc.:

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Pure Storage, Inc. and its subsidiaries (the "Company") as of February 6, 2022 and February 5, 2023, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows, for each of the three years in the period ended February 5, 2023, February 6, 2022, and January 31, 2021 and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of February 6, 2022 and February 5, 2023, and the results of its operations and its cash flows for each of the three years in the period ended February 5, 2023, February 6, 2022, and January 31, 2021 in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of February 5, 2023, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 31, 2023 expressed an unqualified opinion on the Company's internal control over financial reporting.

### Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the 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 financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the 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.



**Revenue Recognition—Determination of Standalone Selling Prices — Refer to Note 2 of the Financial Statements.**

*Critical Audit Matter Description*

The Company generates revenue from product revenue and subscription services revenue. For contracts that contain multiple performance obligations, the Company allocates the transaction price to each performance obligation based on a relative standalone selling price. The standalone selling price is determined based on the price at which the performance obligation is sold separately, or if not observable through past transactions, is estimated taking into account available information such as market conditions and internally approved pricing guidelines related to performance obligations. The determination of the standalone selling price requires management to make significant estimates and judgments related to market conditions and pricing guidelines.

We identified the determination of standalone selling price as a critical audit matter because of the significant judgments made by management in estimating standalone selling price when the price at which the performance obligation sold separately is not available. This required a high degree of auditor judgment and an increased extent of effort to perform qualitative evaluations of the audit evidence related to management's determination of the standalone selling price.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to standalone selling price included the following, among others:

- We tested the effectiveness of controls over the Company's methodology and determination of standalone selling price.
- We evaluated the appropriateness of the Company's methodology used to determine standalone selling price by comparing to historical analysis completed by the Company and practices observed in the industry.
- We tested the underlying data that served as the basis for the Company's analysis and the mathematical accuracy of such analysis and verified the consistent application of the methodology of establishing standalone selling price.
- We evaluated the reasonableness of the Company's overall conclusion of standalone selling price.
- We tested the allocation of the transaction price among performance obligations based on relative standalone selling price.

*/s/ Deloitte & Touche LLP*

San Jose, California  
March 31, 2023

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

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Pure Storage, Inc.:

### Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Pure Storage, Inc. and subsidiaries (the "Company") as of February 5, 2023, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of February 5, 2023, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended February 5, 2023, of the Company and our report dated March 31, 2023, expressed an unqualified opinion on those financial statements.

### Basis for Opinion

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control over Financial Reporting

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

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

/s/ Deloitte & Touche LLP

San Jose, California  
March 31, 2023

**PURE STORAGE, INC.**  
**Consolidated Balance Sheets**  
(in thousands, except per share data)

|  | At the End of Fiscal |              |
|--|----------------------|--------------|
|  | 2022                 | 2023         |
| <b>ASSETS</b>  |                      |              |
| Current assets:  |                      |              |
| Cash and cash equivalents  | \$ 466,199           | \$ 580,854   |
| Marketable securities  | 947,073              | 1,001,352    |
| Accounts receivable, net of allowance of \$945 and \$1,057   | 542,144              | 612,491      |
| Inventory  | 38,942               | 50,152       |
| Deferred commissions, current  | 81,589               | 68,617       |
| Prepaid expenses and other current assets  | 116,232              | 161,391      |
| Total current assets   | 2,192,179            | 2,474,857    |
| Property and equipment, net  | 195,282              | 272,445      |
| Operating lease right-of-use assets  | 111,763              | 158,912      |
| Deferred commissions, non-current  | 164,718              | 177,239      |
| Intangible assets, net   | 62,646               | 49,222       |
| Goodwill   | 358,736              | 361,427      |
| Restricted cash  | 10,544               | 10,544       |
| Other assets, non-current  | 39,447               | 38,814       |
| Total assets   | \$ 3,135,315         | \$ 3,543,460 |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>  |                      |              |
| Current liabilities:   |                      |              |
| Accounts payable   | \$ 70,704            | \$ 67,121    |
| Accrued compensation and benefits  | 205,431              | 232,636      |
| Accrued expenses and other liabilities   | 78,511               | 123,749      |
| Operating lease liabilities, current   | 35,098               | 33,707       |
| Deferred revenue, current  | 562,576              | 718,149      |
| Debt, current  | —                    | 574,506      |
| Total current liabilities  | 952,320              | 1,749,868    |
| Long-term debt   | 786,779              | —            |
| Operating lease liabilities, non-current   | 93,479               | 142,473      |
| Deferred revenue, non-current  | 517,296              | 667,501      |
| Other liabilities, non-current   | 31,105               | 42,385       |
| Total liabilities  | 2,380,979            | 2,602,227    |
| Commitments and contingencies (Note 8)   |                      |              |
| Stockholders' equity:  |                      |              |
| Preferred stock, par value of \$0.0001 per share— 20,000 shares authorized; no shares issued and outstanding   | —                    | —            |
| Class A and Class B common stock, par value of \$0.0001 per share— 2,250,000 (Class A 2,000,000, Class B 250,000) shares authorized; 292,633 and 304,076 Class A shares issued and outstanding | 29                   | 30           |
| Additional paid-in capital   | 2,470,943            | 2,493,769    |
| Accumulated other comprehensive loss   | (8,365)              | (15,504)     |
| Accumulated deficit  | (1,708,271)          | (1,537,062)  |
| Total stockholders' equity   | 754,336              | 941,233      |
| Total liabilities and stockholders' equity   | \$ 3,135,315         | \$ 3,543,460 |

*See the accompanying notes to the consolidated financial statements.*

**PURE STORAGE, INC.**  
**Consolidated Statements of Operations**  
(in thousands, except per share data)

|  | Fiscal Year Ended   |                     |                  |
|--|---------------------|---------------------|------------------|
|  | 2021                | 2022                | 2023             |
| Revenue:   |                     |                     |                  |
| Product  | \$ 1,144,098        | \$ 1,442,338        | \$ 1,792,153     |
| Subscription services  | 540,081             | 738,510             | 961,281          |
| Total revenue  | <u>1,684,179</u>    | <u>2,180,848</u>    | <u>2,753,434</u> |
| Cost of revenue:   |                     |                     |                  |
| Product  | 352,987             | 477,899             | 569,793          |
| Subscription services  | 182,268             | 230,430             | 285,995          |
| Total cost of revenue  | <u>535,255</u>      | <u>708,329</u>      | <u>855,788</u>   |
| Gross profit   | 1,148,924           | 1,472,519           | 1,897,646        |
| Operating expenses:  |                     |                     |                  |
| Research and development   | 480,467             | 581,935             | 692,528          |
| Sales and marketing  | 716,014             | 799,001             | 883,609          |
| General and administrative   | 182,477             | 189,981             | 237,996          |
| Restructuring and other  | 30,999              | —                   | —                |
| Total operating expenses   | <u>1,409,957</u>    | <u>1,570,917</u>    | <u>1,814,133</u> |
| Income (loss) from operations  | (261,033)           | (98,398)            | 83,513           |
| Other income (expense), net  | (9,127)             | (30,098)            | 8,295            |
| Income (loss) before provision for income taxes  | (270,160)           | (128,496)           | 91,808           |
| Provision for income taxes   | 11,916              | 14,763              | 18,737           |
| Net income (loss)  | <u>\$ (282,076)</u> | <u>\$ (143,259)</u> | <u>\$ 73,071</u> |
| Net income (loss) per share attributable to common stockholders, basic   | <u>\$ (1.05)</u>    | <u>\$ (0.50)</u>    | <u>\$ 0.24</u>   |
| Net income (loss) per share attributable to common stockholders, diluted   | <u>\$ (1.05)</u>    | <u>\$ (0.50)</u>    | <u>\$ 0.23</u>   |
| Weighted-average shares used in computing net income (loss) per share attributable to common stockholders, basic   | <u>267,824</u>      | <u>285,882</u>      | <u>299,478</u>   |
| Weighted-average shares used in computing net income (loss) per share attributable to common stockholders, diluted | <u>267,824</u>      | <u>285,882</u>      | <u>339,184</u>   |

*See the accompanying notes to the consolidated financial statements.*

**PURE STORAGE, INC.**  
**Consolidated Statements of Comprehensive Income (Loss)**  
(in thousands)

|  | <b>Fiscal Year Ended</b> |              |             |
|--|--------------------------|--------------|-------------|
|  | <b>2021</b>              | <b>2022</b>  | <b>2023</b> |
| Net income (loss)  | \$ (282,076)             | \$ (143,259) | \$ 73,071   |
| Other comprehensive income (loss), net of tax:   |                          |              |             |
| Unrealized net gains (losses) on available-for-sale securities   | 3,213                    | (15,107)     | (7,108)     |
| Reclassification adjustment for net gains on available-for-sale securities included in net income (loss) | (1,252)                  | (668)        | (31)        |
| Change in unrealized net gains (losses) on available-for-sale securities                                 | 1,961                    | (15,775)     | (7,139)     |
| Comprehensive income (loss)  | \$ (280,115)             | \$ (159,034) | \$ 65,932   |

*See the accompanying notes to consolidated financial statements.*

**PURE STORAGE, INC.**  
**Consolidated Statements of Stockholders' Equity**  
(in thousands)

|   | Common Stock |        | Additional<br>Paid-In<br>Capital | Accumulated<br>Other<br>Comprehensive<br>Income<br>(Loss) | Accumulated<br>Deficit | Total Stockholders'<br>Equity |
|---|--------------|--------|----------------------------------|---|------------------------|-------------------------------|
|   | Shares       | Amount |                                  |   |                        |                               |
| Balance at the end of fiscal 2020                         | 264,008      | \$ 26  | \$ 2,107,579                     | \$ 5,449  | \$ (1,282,936)         | \$ 830,118                    |
| Issuance of common stock upon exercise of stock options   | 9,734        | 1      | 59,509                           | —   | —                      | 59,510                        |
| Stock-based compensation expense                          | —            | —      | 242,685                          | —   | —                      | 242,685                       |
| Vesting of restricted stock units                         | 11,241       | 1      | (1)                              | —   | —                      | —                             |
| Cancellation and forfeiture of restricted stock           | (317)        | —      | —                                | —   | —                      | —                             |
| Tax withholding on vesting of equity awards               | (490)        | —      | (8,258)                          | —   | —                      | (8,258)                       |
| Common stock issued under employee stock purchase plan    | 3,714        | —      | 32,439                           | —   | —                      | 32,439                        |
| Repurchases of common stock                               | (9,527)      | —      | (135,175)                        | —   | —                      | (135,175)                     |
| Equity awards assumed in an acquisition                   | —            | —      | 8,802                            | —   | —                      | 8,802                         |
| Other comprehensive income                                | —            | —      | —                                | 1,961   | —                      | 1,961                         |
| Net loss  | —            | —      | —                                | —   | (282,076)              | (282,076)                     |
| Balance at the end of fiscal 2021                         | 278,363      | \$ 28  | \$ 2,307,580                     | \$ 7,410  | \$ (1,565,012)         | \$ 750,006                    |
| Issuance of common stock upon exercise of stock options   | 5,955        | —      | 48,543                           | —   | —                      | 48,543                        |
| Stock-based compensation expense                          | —            | —      | 289,185                          | —   | —                      | 289,185                       |
| Vesting of restricted stock units                         | 12,955       | 1      | (1)                              | —   | —                      | —                             |
| Cancellation and forfeiture of restricted stock           | (62)         | —      | —                                | —   | —                      | —                             |
| Tax withholding on vesting of equity awards               | (454)        | —      | (10,835)                         | —   | —                      | (10,835)                      |
| Common stock issued under employee stock purchase plan    | 4,365        | —      | 36,641                           | —   | —                      | 36,641                        |
| Repurchases of common stock                               | (8,489)      | —      | (200,170)                        | —   | —                      | (200,170)                     |
| Other comprehensive loss                                  | —            | —      | —                                | (15,775)  | —                      | (15,775)                      |
| Net loss  | —            | —      | —                                | —   | (143,259)              | (143,259)                     |
| Balance at the end of fiscal 2022                         | 292,633      | \$ 29  | \$ 2,470,943                     | \$ (8,365)  | \$ (1,708,271)         | \$ 754,336                    |
| Cumulative-effect adjustment from adoption of ASU 2020-06 | —            | —      | (133,265)                        | —   | 98,138                 | (35,127)                      |
| Issuance of common stock upon exercise of stock options   | 2,988        | —      | 25,073                           | —   | —                      | 25,073                        |
| Stock-based compensation expense                          | —            | —      | 329,723                          | —   | —                      | 329,723                       |
| Vesting of restricted stock units                         | 13,916       | 1      | (1)                              | —   | —                      | —                             |
| Tax withholding on vesting of equity awards               | (643)        | —      | (19,601)                         | —   | —                      | (19,601)                      |
| Common stock issued under employee stock purchase plan    | 3,014        | —      | 39,965                           | —   | —                      | 39,966                        |
| Repurchases of common stock                               | (7,832)      | —      | (219,068)                        | —   | —                      | (219,069)                     |
| Other comprehensive loss                                  | —            | —      | —                                | (7,139)   | —                      | (7,139)                       |
| Net income  | —            | —      | —                                | —   | 73,071                 | 73,071                        |
| Balance at the end of fiscal 2023                         | 304,076      | \$ 30  | \$ 2,493,769                     | \$ (15,504)   | \$ (1,537,062)         | \$ 941,233                    |

*See the accompanying notes to the consolidated financial statements.*

**PURE STORAGE, INC.**  
**Consolidated Statements of Cash Flows**  
(in thousands)

|  | Fiscal Year Ended |                   |                   |
|--|-------------------|-------------------|-------------------|
|  | 2021              | 2022              | 2023              |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>  |                   |                   |                   |
| Net income (loss)  | \$ (282,076)      | \$ (143,259)      | \$ 73,071         |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities: |                   |                   |                   |
| Depreciation and amortization  | 70,042            | 83,151            | 100,432           |
| Amortization of debt discount and debt issuance costs                                    | 29,070            | 31,577            | 3,210             |
| Stock-based compensation expense   | 242,344           | 286,963           | 327,617           |
| Impairment of long-lived assets  | 7,505             | 471               | —                 |
| Other  | 7,340             | 13,075            | 4,145             |
| Changes in operating assets and liabilities, net of effects of acquisitions:             |                   |                   |                   |
| Accounts receivable, net   | 410               | (81,247)          | (70,724)          |
| Inventory  | (8,690)           | 4,118             | (10,619)          |
| Deferred commissions   | (48,721)          | (58,383)          | 451               |
| Prepaid expenses and other assets  | (33,982)          | (25,788)          | (31,580)          |
| Operating lease right-of-use assets  | 28,804            | 29,952            | 33,813            |
| Accounts payable   | (14,364)          | 6,711             | (7,075)           |
| Accrued compensation and other liabilities   | 76,972            | 58,961            | 72,084            |
| Operating lease liabilities  | (27,318)          | (32,351)          | (33,359)          |
| Deferred revenue   | 140,305           | 236,176           | 305,768           |
| Net cash provided by operating activities  | <u>187,641</u>    | <u>410,127</u>    | <u>767,234</u>    |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>  |                   |                   |                   |
| Purchases of property and equipment  | (94,975)          | (102,287)         | (158,139)         |
| Acquisitions, net of cash acquired   | (339,641)         | —                 | (1,989)           |
| Purchases of marketable securities   | (573,959)         | (617,043)         | (501,435)         |
| Sales of marketable securities   | 171,530           | 200,482           | 6,155             |
| Maturities of marketable securities  | 423,936           | 366,165           | 433,995           |
| Other  | (5,000)           | (600)             | —                 |
| Net cash used in investing activities  | <u>(418,109)</u>  | <u>(153,283)</u>  | <u>(221,413)</u>  |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES</b>  |                   |                   |                   |
| Net proceeds from exercise of stock options  | 59,339            | 48,709            | 24,778            |
| Proceeds from issuance of common stock under employee stock purchase plan                | 32,439            | 36,641            | 39,965            |
| Proceeds from borrowings, net of issuance costs  | 251,892           | —                 | —                 |
| Principal payments on borrowings and finance lease obligations                           | —                 | (2,137)           | (257,240)         |
| Tax withholding on vesting of equity awards  | (8,258)           | (10,835)          | (19,601)          |
| Repurchases of common stock  | (135,175)         | (200,170)         | (219,068)         |
| Net cash provided by (used in) financing activities                                      | <u>200,237</u>    | <u>(127,792)</u>  | <u>(431,166)</u>  |
| Net increase (decrease) in cash, cash equivalents and restricted cash                    | (30,231)          | 129,052           | 114,655           |
| Cash, cash equivalents and restricted cash, beginning of year                            | 377,922           | 347,691           | 476,743           |
| Cash, cash equivalents and restricted cash, end of year                                  | <u>\$ 347,691</u> | <u>\$ 476,743</u> | <u>\$ 591,398</u> |
| <b>CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT END OF YEAR</b>                         |                   |                   |                   |
| Cash and cash equivalents  | \$ 337,147        | \$ 466,199        | \$ 580,854        |
| Restricted cash  | \$ 10,544         | \$ 10,544         | \$ 10,544         |
| Cash, cash equivalents and restricted cash, end of year                                  | <u>\$ 347,691</u> | <u>\$ 476,743</u> | <u>\$ 591,398</u> |
| <b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION</b>                                 |                   |                   |                   |
| Cash paid for interest   | \$ 2,279          | \$ 5,019          | \$ 1,185          |
| Cash paid for income taxes   | \$ 10,522         | \$ 12,662         | \$ 14,391         |
| <b>SUPPLEMENTAL DISCLOSURES OF NON-CASH INVESTING AND FINANCING INFORMATION</b>          |                   |                   |                   |
| Property and equipment purchased but not yet paid  | \$ 10,979         | \$ 7,441          | \$ 14,902         |
| Fair value of equity awards assumed in an acquisition                                    | \$ 8,802          | \$ —              | \$ —              |

*See the accompanying notes to the consolidated financial statements.*

## PURE STORAGE, INC.

### Notes to Consolidated Financial Statements

#### Note 1. Business Overview

##### ***Organization and Description of Business***

Pure Storage, Inc. (the Company, we, us, or other similar pronouns) was originally incorporated in the state of Delaware in October 2009 under the name OS76, Inc. In January 2010, we changed our name to Pure Storage, Inc. We are headquartered in Mountain View, California and have wholly owned subsidiaries throughout the world.

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

##### ***Basis of Presentation and Principles of Consolidation***

We operate using a 52/53 week fiscal year ending on the first Sunday after January 30. Fiscal 2021 and 2023 were both 52-week years that ended on January 31, 2021 and February 5, 2023, respectively. Fiscal 2022 was a 53-week year that ended on February 6, 2022. Unless otherwise stated, all dates refer to our fiscal years.

The consolidated financial statements include the accounts of the Company and our wholly owned subsidiaries and have been prepared in conformity with accounting principles generally accepted in the United States (U.S. GAAP). All intercompany balances and transactions have been eliminated in consolidation.

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

The functional currency of our foreign subsidiaries is the U.S. dollar. Transactions denominated in currencies other than the functional currency are remeasured to the functional currency at the average exchange rate in effect during the period. At the end of each reporting period, monetary assets and liabilities are remeasured using exchange rates in effect at the balance sheet date. Non-monetary assets and liabilities are remeasured at historical exchange rates. Foreign currency transaction gains and losses are recorded in other income (expense), net in the consolidated statements of operations.

##### ***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and accompanying notes. Actual results could differ from these estimates and assumptions due to risks and uncertainties. Such estimates include, but are not limited to, the determination of standalone selling price for revenue arrangements with multiple performance obligations when the price at which the performance obligation sold separately or observable past transactions are not available, useful lives of intangible assets and property and equipment, the period of benefit for deferred contract costs for commissions, stock-based compensation, provision for income taxes including related reserves, fair value of equity assumed, intangible and tangible assets acquired and liabilities assumed for business combinations. Management bases its estimates on historical experience and on various other assumptions which management believes to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

##### ***Concentration Risk***

Financial instruments that are exposed to concentration of credit risk consist primarily of cash and cash equivalents, marketable securities, and accounts receivable. At the end of fiscal 2022 and 2023, the majority of our cash and cash equivalents are primarily invested with two global financial institutions and our deposits exceed federally insured limits. These two global financial institutions were identified by the Financial Stability Board in 2022 as being global systemically important banks and are allocated to buckets 2 or higher. Our investments are intended to facilitate liquidity and capital preservation and consist predominantly of highly-rated fixed income securities. Our investment policy also requires diversification of investment type and credit exposures, and includes certain limits on portfolio duration. Management believes that the financial institutions that hold our cash, cash equivalents and marketable securities are financially sound and, accordingly, are subject to minimal credit risk.



We define a customer as an entity that purchases our products and services from one of our channel partners or from us directly. A substantial amount of our revenue and accounts receivable are derived from the United States across a multitude of industries. We perform ongoing evaluations to determine partner and customer credit.

One channel partner represented 10 percent or more of total accounts receivable at the end of fiscal 2022. No customer or channel partner represented 10 percent or more of total accounts receivable at the end of fiscal 2023 or more than 10 percent of revenue for fiscal 2021, 2022 or 2023.

We rely on a limited number of contract manufacturers and suppliers of components for our products. In instances where contract manufacturers and suppliers fail to perform their obligations, we may be unable to find alternative contract manufacturers and suppliers or satisfactorily deliver our products to our customers on time.

### ***Cash and Cash Equivalents***

Cash and cash equivalents consist of cash in banks and highly liquid investments, primarily money market accounts and U.S. government treasury notes, purchased with an original maturity of three months or less.

### ***Marketable Securities***

We classify our marketable securities as available-for-sale (AFS) at the time of purchase and reevaluate such classification at each balance sheet date. We may sell these securities at any time for use in current operations even if they have not yet reached maturity. As a result, we classify our securities, including those with maturities beyond twelve months, as current assets in the consolidated balance sheets. We carry these securities at estimated fair value and record unrealized gains and losses in accumulated other comprehensive income (loss), which is reflected as a component of stockholders' equity. We evaluate our AFS debt securities with an unamortized cost basis in excess of estimated fair value to determine what amount of that difference, if any, is caused by expected credit losses. Credit-related impairment losses, not to exceed the amount that fair value is less than the amortized cost basis, are recognized through an allowance for credit losses with changes in the allowance for credit losses recognized as a charge to other income (expense), net, in the consolidated statements of operations. Any remaining impairment is included in accumulated other comprehensive income (loss) as a component of stockholders' equity. Realized gains and losses from the sale of marketable securities are determined based on the specific identification method. Realized gains and losses are reported in other income (expense), net in the consolidated statements of operations.

### ***Fair Value of Financial Instruments***

The carrying value of our financial instruments, including cash equivalents, accounts receivable, accounts payable and accrued liabilities, approximates fair value.

### ***Accounts Receivable and Allowance***

Accounts receivable are recorded at the invoiced amount, and stated at realizable value, net of an allowance for doubtful accounts. Credit is extended to partners and customers based on an evaluation of their financial condition and other factors. We generally do not require collateral or other security to support accounts receivable. We perform ongoing credit evaluations and maintain an allowance for doubtful accounts.

We assess the collectability of the accounts by taking into consideration the aging of our trade receivables, historical experience, and management judgment. We write off trade receivables against the allowance when management determines a balance is uncollectible and no longer actively pursues collection of the receivable.

The following table presents the changes in the allowance for doubtful accounts:

|  | Fiscal Year Ended |               |                 |
|--|-------------------|---------------|-----------------|
|  | 2021              | 2022          | 2023            |
|  | (in thousands)    |               |                 |
| Allowance for doubtful accounts, beginning balance | \$ 542            | \$ 1,033      | \$ 945          |
| Provision, net of cash received                    | 496               | (18)          | 377             |
| Write-offs   | (5)               | (70)          | (265)           |
| Allowance for doubtful accounts, ending balance    | <u>\$ 1,033</u>   | <u>\$ 945</u> | <u>\$ 1,057</u> |

### **Restricted Cash**

Restricted cash is comprised of cash collateral for letters of credit related to our leases and for a vendor credit card program. At the end of fiscal 2022 and 2023, we had restricted cash of \$10.5 million.

### **Inventory**

Inventory consists of finished goods and component parts, which are purchased from contract manufacturers. Product demonstration units, which we regularly sell, are the primary component of our inventories. Inventories are stated at the lower of cost or net realizable value. Cost is determined using the specific identification method for finished goods and weighted-average method for component parts. We account for excess and obsolete inventory by reducing the carrying value to the estimated net realizable value of the inventory based upon management's assumptions about future demand and market conditions. In addition, we record a liability for firm, non-cancelable and unconditional purchase commitments with contract manufacturers and suppliers for quantities in excess of future demand forecasts consistent with excess and obsolete inventory valuations. Inventory write-offs were insignificant for fiscal 2021, 2022 and 2023.

### **Property and Equipment, Net**

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization is computed using the straight-line method over the estimated useful lives of the respective assets (test equipment—4 years, computer equipment and software—4 to 5 years, furniture and fixtures—7 years). Leasehold improvements are amortized over the shorter of their estimated useful lives or the remaining lease term. Depreciation commences once the asset is placed in service.

In accordance with our accounting practices, we review the estimated useful lives of our property and equipment on an ongoing basis. In the first quarter of fiscal 2021, management determined that the estimated useful lives of its test equipment and certain computer equipment and software required revision. The estimated useful lives of test equipment and certain computer equipment and software were revised to 4 years. Previously, the estimated useful lives of these assets ranged from 2 to 3 years. The change in estimated useful lives was accounted for as a change in estimate and recognized on a prospective basis effective February 3, 2020. The effect of this change in estimate resulted in a reduction to depreciation expense of \$23.6 million during fiscal 2021.

### **Business Combinations**

We allocate the purchase price to the assets acquired and liabilities assumed based on their estimated fair values. The excess of the purchase price over the fair values of the assets acquired and liabilities assumed is recorded as goodwill. During the measurement period, which may be up to one year from the acquisition date, we may record adjustments to the estimated fair value of the assets acquired and liabilities assumed, with the corresponding offset to goodwill. The results of operations of an acquired business is included in our consolidated financial statements from the date of acquisition. Acquisition-related expenses are expensed as incurred.

### ***Goodwill***

Goodwill represents the excess of the purchase price consideration over the estimated fair value of the tangible and intangible assets acquired and liabilities assumed in a business combination. Goodwill is evaluated for impairment annually in the fourth quarter of our fiscal year as a single reporting unit, and whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable. We may elect to qualitatively assess whether it is more likely than not that the fair value of our reporting unit is less than its carrying value. If we opt not to qualitatively assess, a quantitative goodwill impairment test is performed. The quantitative test compares our reporting unit's carrying amount, including goodwill, to its fair value calculated based on our enterprise value. If the carrying amount exceeds its fair value, an impairment loss is recognized for the excess.

### ***Purchased Intangible Assets***

Purchased intangible assets with finite lives are stated at cost, net of accumulated amortization. We amortize our intangible assets on a straight-line basis over an estimated useful life of three to seven years.

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

We review our long-lived assets, including property and equipment and finite-lived intangible assets, for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. We measure the recoverability of these assets by comparing the carrying amounts to the future undiscounted cash flows the assets are expected to generate. If the total of the future undiscounted cash flows is less than the carrying amount of an asset, we record an impairment charge for the amount by which the carrying amount of the asset exceeds its fair value.

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

Prior to the adoption of Accounting Standards Update (ASU) 2020-06 on February 7, 2022, in accounting for the issuance of our convertible senior notes (the Notes), we separated the Notes into liability and equity components. The carrying amount of the liability component was determined 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 representing the conversion option was calculated by deducting the fair value of the liability component from the principal amount of the Notes as a whole. This difference represented a debt discount that was amortized to interest expense using the effective interest method over the term of the Notes. The equity component of the Notes was included in additional paid-in capital in the consolidated balance sheets and was not remeasured as it continued to meet the conditions for equity classification. Transaction costs related to the issuance of the Notes (debt issuance costs) were allocated to the liability and equity components using the same proportions as the initial carrying value of the Notes. The debt issuance costs attributable to the liability component were netted with the principal amount of the Notes and amortized to interest expense using the effective interest method over the term of the Notes. The debt issuance costs attributable to the equity component were netted with the equity component of the Notes in additional paid-in capital.

Upon adoption of ASU 2020-06, we combined the liability and equity components assuming that the instrument was accounted for as a single liability from inception to the date of adoption, resulting in the elimination of the debt discount. Similarly, the liability and equity components of the debt issuance costs were combined as a reduction to the Notes and is being amortized to interest expense using the effective interest method over the remaining term of the Notes.

### ***Deferred Commissions***

Deferred commissions consist of incremental costs paid to our sales force to obtain customer contracts. Deferred commissions related to product revenue are recognized upon transfer of control to customers and deferred commissions related to subscription services revenue are amortized over an expected useful life of six years. We determine the expected useful life based on an estimated benefit period by evaluating our technology development life cycle, expected customer relationship period and other factors. We classify deferred commissions as current and non-current on our consolidated balance sheets based on the timing of when we expect to recognize the expense. Amortization of deferred commissions is included in sales and marketing expense in the consolidated statements of operations.

## **Leases**

We determine if an arrangement contains a lease at inception and classify leases as an operating or finance lease at commencement date. Lease liabilities are recognized at the present value of the future lease payments at commencement date. The interest rate implicit in our operating and finance leases is not readily determinable, and therefore an incremental borrowing rate is estimated to determine the present value of future payments. The estimated incremental borrowing rate factors in a hypothetical interest rate on a collateralized basis with similar terms, payments, and economic environments. The lease right-of-use (ROU) asset is determined based on the lease liability initially established and reduced for any prepaid lease payments and any lease incentives. We account for the lease and non-lease components of operating and finance lease contract consideration as a single lease component.

Certain of the operating lease agreements contain rent concession, rent escalation, and option to renew provisions. Rent concession and rent escalation provisions are considered in determining the lease cost. Lease cost under our operating leases is recognized on a straight-line basis over the lease term commencing on the date we have the right to use the leased property. For finance leases, we recognize amortization expense of the finance lease ROU asset on a straight-line basis over the shorter of its useful life or lease term and record interest expense for finance lease liabilities based on the incremental borrowing rate. We generally use the base, non-cancelable, lease term when recognizing the lease assets and liabilities, unless it is reasonably certain that an extension or termination option will be exercised. Assets recognized and the short and long-term lease liabilities from finance leases are included in property and equipment, net, accrued expenses and other liabilities and other liabilities, non-current in the consolidated balance sheets.

In addition, certain of our operating lease agreements contain tenant improvement allowances from our landlords. These allowances are accounted for as lease incentives and reduce our ROU asset and lease cost over the lease term.

For short-term leases (defined as leases that, at the commencement date, have a lease term of twelve months or less, and do not include an option to purchase the underlying asset that we are reasonably certain to exercise), we recognize rent expense in our consolidated statements of operations on a straight-line basis over the lease term and record variable lease payments as incurred.

## **Deferred Revenue**

Deferred revenue primarily consists of amounts that have been invoiced but have not yet been recognized as revenue and performance obligations pertaining to subscription services. The current portion of deferred revenue represents the amounts that are expected to be recognized as revenue within one year of the consolidated balance sheet dates.

## **Revenue Recognition**

We generate revenue from two sources: (1) product revenue which includes the sale of integrated storage hardware and embedded licensed operating system software and (2) subscription services revenue which includes our portfolio of *Evergreen* offerings and *Portworx*. Subscription services revenue also include our professional services offerings such as installation and implementation consulting services.

We typically recognize product revenue upon transfer of control to our customers and the satisfaction of our performance obligations. For *Evergreen//Flex*, product revenue is recognized upon the commencement of the underlying subscription services. Products are typically shipped directly by us to customers.

Our subscription services revenue is derived from the services we perform in connection with the sale of subscription services and is recognized ratably over the contractual term, which generally ranges from one to six years. The majority of our product solutions are sold with an *Evergreen* subscription service agreement, which typically commences upon transfer of control of the corresponding products to our customers. Costs for subscription services are expensed when incurred. In addition, our *Evergreen* subscription provides our customers with a new controller based upon certain contractual terms. The controller refresh represents a separate performance obligation that is included within the *Evergreen* subscription service agreement and the allocated revenue is recognized upon shipment of the controller.

Our *Evergreen* subscription services also include the right to receive unspecified software updates and upgrades on a when-and-if-available basis, software bug fixes, replacement parts and other services related to the underlying infrastructure, as well as access to our cloud-based management and support platform. We also sell professional services such as installation and implementation consulting services and the related revenue is recognized as services are performed.

We recognize revenue upon the transfer of promised goods or services to customers in an amount that reflects the consideration we expect to be entitled in exchange for those goods or services. This is achieved through applying the following five-step approach:

- *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*
- *Recognition of revenue when, or as, we satisfy a performance obligation*

When applying this five-step approach, we apply judgment in determining the customer's ability and intention to pay, which is based on a variety of factors including the customer's historical payment experience and/or published credit and financial information pertaining to the customer. To the extent a customer contract includes multiple promised goods or services, we determine whether promised goods or services should be accounted for as a separate performance obligation. The transaction price is determined based on the consideration which we will be entitled to in exchange for transferring goods or services to the customer. For contracts that contain multiple performance obligations, we allocate the transaction price to each performance obligation based on a relative standalone selling price (SSP). The SSP is determined based on the price at which the performance obligation is sold separately, or if not observable through past transactions, is estimated taking into account available information such as market conditions and internally approved pricing guidelines related to performance obligations.

### ***Warranty***

We generally provide a three-year warranty on hardware and a 90-day warranty on our software embedded in the hardware. Our hardware warranty provides for parts replacement for defective components and our software warranty provides for bug fixes. Our *Evergreen* subscription agreement provides for the same parts replacement that customers are entitled to under our warranty program, except that replacement parts are delivered according to targeted response times to minimize disruption to our customers' critical business applications. Substantially all customers purchase *Evergreen* subscription agreements. We will establish a warranty reserve for specifically identified products if and when we determine we have systemic product failure. Our estimate for future estimated costs related to warranty activities is based upon historical product failure rates and historical costs incurred in correcting product failures. Warranty reserve at the end of fiscal 2023 was \$7.4 million.

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

Research and development costs are expensed as incurred. Research and development costs consist primarily of employee compensation and related expenses, prototype expenses, to the extent there is no alternative use for that equipment, depreciation of equipment used in research and development, third-party engineering and contractor support costs, data center and cloud services costs as well as allocated overhead costs.

### ***Capitalized Internal-Use Software Costs***

We expense costs to develop software that is externally marketed before technological feasibility is reached. We have determined that technological feasibility is reached shortly before the release of our products and as a result, the development costs incurred after the establishment of technological feasibility and before the release of those products have not been significant and accordingly, all related software development costs have been expensed as incurred.

We capitalize (i) costs incurred to develop or modify software solely for our internal use, including hosted applications used to deliver our support services, and (ii) certain implementation costs incurred in a hosting arrangement that is a service contract when the preliminary project stage is complete, management with the relevant authority authorizes and commits to the funding of the software project, and it is probable the project will be completed and used to perform the intended function. Costs related to preliminary project activities and post implementation activities are expensed as incurred.

Software development costs are capitalized to property, plant and equipment and amortized using the straight-line method over an estimated useful life of four years. Software development costs capitalized to property and equipment were \$7.8 million and \$7.3 million for fiscal 2022 and 2023. Amortization expense for software development costs was none during fiscal 2021 and 2022 and \$2.2 million during fiscal 2023.

Software implementation costs are capitalized to either prepaid and other current assets or other assets, non-current on our consolidated balance sheet and amortized over the terms of the associated hosting arrangements. Software implementation costs capitalized were \$3.5 million and \$9.3 million for fiscal 2022 and 2023. Amortization expense for software implementation costs was \$0.1 million, \$0.5 million and \$1.5 million during fiscal 2021, 2022 and 2023.

### ***Advertising Expenses***

Advertising costs are expensed as incurred. Advertising expenses were \$8.1 million, \$15.3 million and \$11.1 million for fiscal 2021, 2022 and 2023.

### ***Stock-Based Compensation***

Stock-based compensation includes expenses related to restricted stock units (RSUs), performance restricted stock units (PRSUs), restricted stock, stock options and purchase rights issued to employees under our employee stock purchase plan (ESPP). RSUs, PRSUs and restricted stock are measured at the fair market value of the underlying stock at the grant date. We determine the fair value of purchase rights issued to employees under our ESPP and our stock options under our equity plans on the date of grant utilizing the Black-Scholes option pricing model, which is impacted by the fair value of our common stock, as well as changes in assumptions regarding a number of subjective variables. These variables include the expected common stock price volatility over the term of the awards, the expected term of the awards, risk-free interest rates and expected dividend yield.

We recognize stock-based compensation expense for stock-based awards with only service conditions on a straight-line basis over the period during which an employee is required to provide services in exchange for the award (generally the vesting period of the award). We account for forfeitures as they occur. For stock-based awards granted to employees with a performance condition, we recognize stock-based compensation expense for these awards under the accelerated attribution method over the requisite service period when management determines it is probable that the performance condition will be satisfied.

### ***Income Taxes***

We account for income taxes using the asset and liability method. Deferred income taxes are recognized by applying enacted statutory tax rates applicable to future years to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance to amounts that are more likely than not to be realized.

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

### ***Recently Adopted Accounting Pronouncement***

In August 2020, the FASB issued ASU 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which simplifies the accounting for certain convertible instruments, amends guidance on derivative scope exceptions for contracts in an entity's own equity, and requires the use of the if-converted method to calculate the impact of convertible instruments on diluted earnings per share (EPS) which results in the inclusion of the effect of share settlement for instruments that may be settled in cash or shares. We adopted this standard as of February 7, 2022 using the modified retrospective basis, under which financial results reported in prior periods were not adjusted. Adoption resulted in an adjustment of \$133.3 million to reclassify the remaining balance of the conversion feature recorded in additional paid-in capital to the Notes of \$35.2 million and accumulated deficit of \$98.1 million on the consolidated balance sheet. Accordingly, we no longer carry an equity component of the Notes. For further information, see Note 7, Debt, and Note 13, Net Income (Loss) per Share Attributable to Common Stockholders.

### ***Recent Accounting Pronouncements***

There are no recently issued accounting pronouncements that are expected to have material impact on our consolidated financial statements and accompanying disclosures.

### Note 3. Financial Instruments

#### Fair Value Measurements

We define fair value as the exchange price that would be received from sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. We measure our financial assets and liabilities at fair value at each reporting period using a fair value hierarchy which requires us to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument's classification within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Three levels of inputs may be used to measure fair value:

- *Level 1* - Observable inputs are unadjusted quoted prices in active markets for identical assets or liabilities;
- *Level 2* - Observable inputs are quoted prices for similar assets and liabilities in active markets or inputs other than quoted prices that are observable for the assets or liabilities, either directly or indirectly through market corroboration, for substantially the full term of the financial instruments; and
- *Level 3* - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. These inputs are based on our own assumptions used to measure assets and liabilities at fair value and require significant management judgment or estimation.

#### Cash Equivalents, Marketable Securities and Restricted Cash

We measure our cash equivalents, marketable securities and restricted cash at fair value on a recurring basis. We classify our cash equivalents, marketable securities and restricted cash within Level 1 or Level 2 because they are valued using either quoted market prices or inputs other than quoted prices which are directly or indirectly observable in the market, including readily-available pricing sources for the identical underlying security which may not be actively traded. Our fixed income available-for-sale securities consist of high quality, investment grade securities from diverse issuers. The valuation techniques used to measure the fair value of our marketable securities were derived from non-binding market consensus prices that are corroborated by observable market data or quoted market prices for similar instruments.

The following tables summarize our cash equivalents, marketable securities and restricted cash by significant investment categories and their classification within the fair value hierarchy at the end of fiscal 2022 and 2023 (in thousands):

|                                | At the End of Fiscal 2022 |                        |                         |                   |                  |                       |                  |
|--------------------------------|---------------------------|------------------------|-------------------------|-------------------|------------------|-----------------------|------------------|
|                                | Amortized Cost            | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value        | Cash Equivalents | Marketable Securities | Restricted Cash  |
| <b>Level 1</b>                 |                           |                        |                         |                   |                  |                       |                  |
| Money market accounts          | \$ —                      | \$ —                   | \$ —                    | \$ 29,275         | \$ 18,731        | \$ —                  | \$ 10,544        |
| <b>Level 2</b>                 |                           |                        |                         |                   |                  |                       |                  |
| U.S. government treasury notes | 336,303                   | 512                    | (2,176)                 | 334,639           | —                | 334,639               | —                |
| U.S. government agencies       | 49,153                    | 49                     | (193)                   | 49,009            | —                | 49,009                | —                |
| Corporate debt securities      | 491,728                   | 384                    | (4,731)                 | 487,381           | 200              | 487,181               | —                |
| Foreign government bonds       | 12,333                    | 37                     | (17)                    | 12,353            | —                | 12,353                | —                |
| Asset-backed securities        | 60,361                    | 111                    | (453)                   | 60,019            | —                | 60,019                | —                |
| Municipal bonds                | 3,950                     | —                      | (78)                    | 3,872             | —                | 3,872                 | —                |
| <b>Total</b>                   | <b>\$ 953,828</b>         | <b>\$ 1,093</b>        | <b>\$ (7,648)</b>       | <b>\$ 976,548</b> | <b>\$ 18,931</b> | <b>\$ 947,073</b>     | <b>\$ 10,544</b> |



| At the End of Fiscal 2023      |                     |                        |                         |                     |                  |                       |                  |
|--------------------------------|---------------------|------------------------|-------------------------|---------------------|------------------|-----------------------|------------------|
|                                | Amortized Cost      | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value          | Cash Equivalents | Marketable Securities | Restricted Cash  |
| Level 1                        |                     |                        |                         |                     |                  |                       |                  |
| Money market accounts          | \$ —                | \$ —                   | \$ —                    | \$ 49,733           | \$ 39,189        | \$ —                  | \$ 10,544        |
| Level 2                        |                     |                        |                         |                     |                  |                       |                  |
| U.S. government treasury notes | 425,977             | 170                    | (4,229)                 | 421,918             | 32,008           | 389,910               | —                |
| U.S. government agencies       | 23,795              | —                      | (289)                   | 23,506              | —                | 23,506                | —                |
| Corporate debt securities      | 527,164             | 901                    | (9,300)                 | 518,765             | —                | 518,765               | —                |
| Foreign government bonds       | 4,797               | —                      | (44)                    | 4,753               | —                | 4,753                 | —                |
| Asset-backed securities        | 61,371              | 281                    | (1,016)                 | 60,636              | —                | 60,636                | —                |
| Municipal bonds                | 3,950               | —                      | (168)                   | 3,782               | —                | 3,782                 | —                |
| <b>Total</b>                   | <b>\$ 1,047,054</b> | <b>\$ 1,352</b>        | <b>\$ (15,046)</b>      | <b>\$ 1,083,093</b> | <b>\$ 71,197</b> | <b>\$ 1,001,352</b>   | <b>\$ 10,544</b> |

The amortized cost and estimated fair value of our marketable securities are shown below by contractual maturity (in thousands):

| At the End of Fiscal 2023 |                     |                     |
|---------------------------|---------------------|---------------------|
|                           | Amortized Cost      | Fair Value          |
| Due within one year       | \$ 542,675          | \$ 537,272          |
| Due in one to five years  | 468,427             | 460,091             |
| Due in five to ten years  | 3,944               | 3,989               |
| <b>Total</b>              | <b>\$ 1,015,046</b> | <b>\$ 1,001,352</b> |

Unrealized losses on our debt securities have not been recorded into income because we do not intend to sell nor is it more likely than not that we will be required to sell these investments prior to recovery of their amortized cost basis. The decline in fair value of our debt securities is largely due to the rising interest rate environment driven by current market conditions that has resulted in higher credit spreads. The credit ratings associated with our debt securities are mostly unchanged, are highly rated and the issuers continue to make timely principal and interest payments. As a result, there were no credit or non-credit impairment charges recorded in fiscal 2021, 2022, and 2023. The following table presents gross unrealized losses and fair values for those investments that were in a continuous unrealized loss position at the end of fiscal 2022 and 2023, aggregated by investment category (in thousands):

| At the End of Fiscal 2022      |                     |                   |                        |                 |                   |                   |
|--------------------------------|---------------------|-------------------|------------------------|-----------------|-------------------|-------------------|
|                                | Less than 12 months |                   | Greater than 12 months |                 | Total             |                   |
|                                | Fair Value          | Unrealized Loss   | Fair Value             | Unrealized Loss | Fair Value        | Unrealized Loss   |
| U.S. government treasury notes | \$ 193,359          | \$ (2,176)        | \$ —                   | \$ —            | \$ 193,359        | \$ (2,176)        |
| U.S. government agencies       | 24,388              | (193)             | —                      | —               | 24,388            | (193)             |
| Corporate debt securities      | 374,223             | (4,708)           | 1,182                  | (23)            | 375,405           | (4,731)           |
| Foreign government bonds       | 4,098               | (17)              | —                      | —               | 4,098             | (17)              |
| Asset-backed securities        | 37,608              | (453)             | —                      | —               | 37,608            | (453)             |
| Municipal bonds                | 3,872               | (78)              | —                      | —               | 3,872             | (78)              |
| <b>Total</b>                   | <b>\$ 637,548</b>   | <b>\$ (7,625)</b> | <b>\$ 1,182</b>        | <b>\$ (23)</b>  | <b>\$ 638,730</b> | <b>\$ (7,648)</b> |

|                                | At the End of Fiscal 2023 |                 |                        |                    |                   |                    |
|--------------------------------|---------------------------|-----------------|------------------------|--------------------|-------------------|--------------------|
|                                | Less than 12 months       |                 | Greater than 12 months |                    | Total             |                    |
|                                | Fair Value                | Unrealized Loss | Fair Value             | Unrealized Loss    | Fair Value        | Unrealized Loss    |
| U.S. government treasury notes | \$ 250,046                | \$ (130)        | \$ 127,976             | \$ (4,099)         | \$ 378,022        | \$ (4,229)         |
| U.S. government agencies       | 5,194                     | (5)             | 18,312                 | (284)              | 23,506            | (289)              |
| Corporate debt securities      | 99,446                    | (330)           | 277,717                | (8,970)            | 377,163           | (9,300)            |
| Foreign government bonds       | 3,200                     | (5)             | 551                    | (39)               | 3,751             | (44)               |
| Asset-backed securities        | 3,060                     | (25)            | 22,221                 | (991)              | 25,281            | (1,016)            |
| Municipal bonds                | —                         | —               | 3,782                  | (168)              | 3,782             | (168)              |
| <b>Total</b>                   | <b>\$ 360,946</b>         | <b>\$ (495)</b> | <b>\$ 450,559</b>      | <b>\$ (14,551)</b> | <b>\$ 811,505</b> | <b>\$ (15,046)</b> |

Realized gains or losses on sale of marketable securities were not significant for all periods presented.

#### ***Other Financial Instruments***

We measure the fair value of our Notes on a quarterly basis and we determined the fair value of the Notes at the end of fiscal 2022 and 2023 to be a Level 2 measurement due to its limited trading activity. Refer to Note 7 for the net carrying amounts and estimated fair value of the Notes at the end of fiscal 2022 and 2023.

#### Note 4. Business Combination

In October 2020, we acquired all outstanding stock of Portworx Inc. (Portworx), a privately-held container storage company that provides a Kubernetes data services platform for cloud native applications. The transaction costs associated with the acquisition were not material and expensed as incurred. The total purchase consideration for the acquisition of Portworx was \$352.9 million, which consisted of the following (in thousands):

|                               |    |                |
|-------------------------------|----|----------------|
| Cash                          | \$ | 344,049        |
| Fair value of options assumed |    | 8,802          |
| Total                         | \$ | <u>352,851</u> |

We assumed certain unvested and outstanding stock options for Portworx's common stock. These stock options were converted into 1.9 million stock options for shares of our common stock. The fair value of the exchanged options determined using the Black-Scholes option pricing model was \$26.8 million, of which \$8.8 million attributable to services performed prior to the acquisition date was allocated to purchase consideration. The remaining fair value of \$18.0 million was allocated to future services and is being expensed over the remaining service periods as stock-based compensation expense. In addition, we assumed 2.0 million RSUs outstanding with a fair value of \$31.8 million that is being recognized as stock-based compensation expense over a four year vesting period.

The following table summarizes the fair values of assets acquired and liabilities assumed as of the date of the acquisition (in thousands):

|                               | Amount            | Estimated Useful Life |
|-------------------------------|-------------------|-----------------------|
| Goodwill                      | \$ 321,152        |                       |
| Identified intangible assets: |                   |                       |
| Developed technology          | 21,273            | 5 years               |
| Customer relationships        | 6,459             | 7 years               |
| Trade name                    | 3,623             | 3 years               |
| Cash                          | 4,407             |                       |
| Net liabilities assumed       | (4,063)           |                       |
| Total                         | <u>\$ 352,851</u> |                       |

Goodwill generated from this acquisition was primarily attributable to the assembled workforce and expected post-acquisition synergies from combining Portworx container data services with our data services platform to expand our capabilities to support Kubernetes and containers. Goodwill was not deductible for tax purposes. The fair values of developed technology, customer relationships and trade name were derived by applying the excess earnings method, with-and-without method, and the relief-from-royalty method, respectively, all of which are under the income approach whose underlying inputs are considered Level 3. The fair values assigned to assets acquired and liabilities assumed were based on management's estimates and assumptions.

In connection with the Portworx acquisition, we recorded a net deferred tax asset of \$14.7 million. However, this amount was offset by a valuation allowance, thus, resulting in a net zero deferred tax asset during fiscal 2021. We continue to maintain a valuation allowance for our U.S. federal and state deferred tax assets.

In addition, cash payments to certain former shareholders of Portworx totaling \$32.2 million are being made over three years subject to continuous employment and are recognized as an operating expense. The remaining unpaid amount was \$4.9 million at the end of fiscal 2023.

The results of Portworx have been included in our consolidated statements of operations since the acquisition date and are not material. Pro forma results of operations have not been presented because the acquisition was not material to our results of operations.

## Note 5. Balance Sheet Components

### Inventory

Inventory consists of the following (in thousands):

|                | At the End of Fiscal |           |
|----------------|----------------------|-----------|
|                | 2022                 | 2023      |
| Raw materials  | \$ 15,734            | \$ 24,896 |
| Finished goods | 23,208               | 25,256    |
| Inventory      | \$ 38,942            | \$ 50,152 |

### Property and Equipment, Net

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

|   | At the End of Fiscal |            |
|---|----------------------|------------|
|   | 2022                 | 2023       |
| Test equipment                                  | \$ 266,672           | \$ 315,290 |
| Computer equipment and software                 | 206,053              | 262,574    |
| Furniture and fixtures                          | 8,652                | 9,693      |
| Leasehold improvements                          | 47,443               | 71,235     |
| Capitalized software development costs          | 8,528                | 15,806     |
| Total property and equipment                    | 537,348              | 674,598    |
| Less: accumulated depreciation and amortization | (342,066)            | (402,153)  |
| Property and equipment, net                     | \$ 195,282           | \$ 272,445 |

Depreciation and amortization expense related to property and equipment was \$57.1 million, \$65.9 million and \$87.0 million for fiscal 2021, 2022 and 2023, respectively.

### Intangible Assets, Net

Intangible assets, net consist of the following (in thousands):

|                        | At the End of Fiscal |                          |                     |                      |                          |                     |
|------------------------|----------------------|--------------------------|---------------------|----------------------|--------------------------|---------------------|
|                        | 2022                 |                          |                     | 2023                 |                          |                     |
|                        | Gross Carrying Value | Accumulated Amortization | Net Carrying Amount | Gross Carrying Value | Accumulated Amortization | Net Carrying Amount |
| Technology patents     | \$ 19,125            | \$ (13,544)              | \$ 5,581            | \$ 19,125            | \$ (14,826)              | \$ 4,299            |
| Developed technology   | 80,166               | (30,304)                 | 49,862              | 83,211               | (43,366)                 | 39,845              |
| Customer relationships | 6,459                | (1,246)                  | 5,213               | 6,459                | (2,166)                  | 4,293               |
| Trade name             | 3,623                | (1,633)                  | 1,990               | 3,623                | (2,838)                  | 785                 |
| Intangible assets, net | \$ 109,373           | \$ (46,727)              | \$ 62,646           | \$ 112,418           | \$ (63,196)              | \$ 49,222           |

Intangible assets amortization expense was \$13.0 million, \$16.8 million and \$16.5 million for fiscal 2021, 2022 and 2023, respectively. At the end of fiscal 2023, the weighted-average remaining amortization period was 1.6 years for technology patents, 3.0 years for developed technology, 4.7 years for customer relationships, and 0.6 years for trade name. We recorded amortization of technology patents in general and administrative expenses due to their defensive nature, developed technology in cost of product revenue, and customer relationships and trade name in sales and marketing expenses in the consolidated statements of operations.

At the end of fiscal 2023, future expected amortization expense for intangible assets is as follows (in thousands):

| Fiscal Years Ending | Future Expected<br>Amortization<br>Expense |
|---------------------|--|
| 2024                | \$ 16,210                                  |
| 2025                | 15,425                                     |
| 2026                | 12,830                                     |
| 2027                | 3,107                                      |
| 2028                | 1,054                                      |
| Thereafter          | 596  |
| Total               | \$ 49,222                                  |

### **Goodwill**

The change in the carrying amount of goodwill is as follows (in thousands):

|                                      | Amount     |
|--------------------------------------|------------|
| Balance as of the end of fiscal 2022 | \$ 358,736 |
| Goodwill acquired                    | 2,691      |
| Balance as of the end of fiscal 2023 | \$ 361,427 |

There were no impairments to goodwill during fiscal 2022 and 2023.

### **Accrued Expenses and Other Liabilities**

Accrued expenses and other liabilities consist of the following (in thousands):

|   | At the End of Fiscal |            |
|---|----------------------|------------|
|   | 2022                 | 2023       |
| Taxes payable                                       | \$ 6,312             | \$ 16,615  |
| Accrued marketing                                   | 13,257               | 14,228     |
| Accrued cloud and outside services                  | 6,135                | 7,644      |
| Supply chain-related accruals <sup>(1)</sup>        | 6,991                | 23,545     |
| Accrued service logistics and professional services | 6,244                | 7,927      |
| Acquisition earn-out and deferred consideration     | 5,211                | 3,556      |
| Finance lease liabilities, current                  | 1,035                | 5,432      |
| Customer deposits from contracts with customers     | 10,409               | 17,824     |
| Other accrued liabilities                           | 22,917               | 26,978     |
| Total accrued expenses and other liabilities        | \$ 78,511            | \$ 123,749 |

(1) Primarily consist of warranty reserves and accruals related to our inventory and inventory purchase commitments with our contract manufacturers.

## Note 6. Deferred Revenue and Commissions

### Deferred Commissions

Changes in total deferred commissions during the periods presented are as follows (in thousands):

|                                     | Fiscal Year Ended |                   |
|-------------------------------------|-------------------|-------------------|
|                                     | 2022              | 2023              |
| Beginning balance                   | \$ 187,924        | \$ 246,307        |
| Additions                           | 217,595           | 155,414           |
| Recognition of deferred commissions | (159,212)         | (155,865)         |
| Ending balance                      | <u>\$ 246,307</u> | <u>\$ 245,856</u> |

During fiscal 2021, 2022 and 2023, we recognized sales commission expenses of \$150.2 million, \$175.9 million, and \$170.0 million, respectively. Of the \$245.9 million total deferred commissions balance at the end of fiscal 2023, we expect to recognize approximately 28% as sales commission expense over the next 12 months and the remainder thereafter.

There was no impairment related to capitalized commissions for fiscal 2021, 2022 or 2023.

### Deferred Revenue

Changes in total deferred revenue during the periods presented are as follows (in thousands):

|                                 | Fiscal Year Ended   |                     |
|---------------------------------|---------------------|---------------------|
|                                 | 2022                | 2023                |
| Beginning balance               | \$ 843,697          | \$ 1,079,872        |
| Additions                       | 937,510             | 1,248,417           |
| Recognition of deferred revenue | (701,335)           | (942,639)           |
| Ending balance                  | <u>\$ 1,079,872</u> | <u>\$ 1,385,650</u> |

During fiscal 2022 and 2023, we recognized approximately \$442.7 million and \$567.8 million, respectively, in revenue pertaining to deferred revenue as of the beginning of each period.

### Remaining Performance Obligations

Total remaining performance obligations (RPO) which is contracted but not recognized revenue was \$1.8 billion at the end of fiscal 2023. RPO consists of both deferred revenue and non-cancelable amounts that are expected to be invoiced and recognized as revenue in future periods. Product orders are generally cancelable until delivery has occurred, and as such unfulfilled product orders are excluded from RPO. Of the \$1.8 billion RPO at the end of fiscal 2023, we expect to recognize approximately 47% over the next 12 months, and the remainder thereafter.

## Note 7. Debt

### Convertible Senior Notes

In April 2018, we issued \$575.0 million in principal amount of 0.125% convertible senior notes due 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act and received proceeds of \$562.1 million, after deducting the underwriters' discounts and commissions. The Notes are governed by an indenture (the Indenture) between us, as the issuer, and U.S. Bank National Association, as trustee. The Notes are our senior unsecured obligations. The Indenture does not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or the issuance or repurchase of securities by us or any of our subsidiaries. The Notes will mature on April 15, 2023. Interest is payable semi-annually in arrears on April 15 and October 15 of each year.

The Notes are convertible for up to 21,884,155 shares of our common stock at an initial conversion rate of approximately 38.0594 shares of common stock per \$1,000 principal amount, which is equal to an initial conversion price of approximately \$26.27 per share of common stock, subject to adjustment. On October 14, 2022, we provided notice to the holders electing to settle all conversions on or after October 15, 2022 with cash up to the principal amount of the Notes and shares for any excess conversion value.

The conversion price will be subject to adjustment in some events. Following certain corporate events that occur prior to the maturity date or following our issuance of a notice of redemption, we will increase the conversion rate for a holder who elects to convert its Notes in connection with such corporate event or during the related redemption period in certain circumstances. Additionally, upon the occurrence of a corporate event that constitutes a "fundamental change" per the Indenture, holders of the Notes may require us to repurchase for cash all or a portion of the Notes at a purchase price equal to 100% of the principal amount of the Notes plus accrued and unpaid contingent interest.

The Notes consisted of the following (in thousands):

|   | At the End of Fiscal |                   |
|---|----------------------|-------------------|
|   | 2022                 | 2023              |
| <b>Liability:</b>   |                      |                   |
| Principal   | \$ 575,000           | \$ 575,000        |
| Less: debt discount, net of amortization <sup>(1)</sup>       | (35,641)             | —                 |
| Less: debt issuance costs, net of amortization <sup>(1)</sup> | (2,580)              | (494)             |
| Net carrying amount of the Notes                              | <u>\$ 536,779</u>    | <u>\$ 574,506</u> |
| <b>Stockholders' equity recorded at issuance:</b>             |                      |                   |
| Allocated value of the conversion feature <sup>(1)</sup>      | \$ 136,333           | \$ —              |
| Less: debt issuance costs <sup>(1)</sup>                      | (3,068)              | —                 |
| Additional paid-in capital                                    | <u>\$ 133,265</u>    | <u>\$ —</u>       |

<sup>(1)</sup> Fiscal 2023 reflects the adoption of ASU 2020-06 on February 7, 2022 using the modified retrospective method as described in Note 2.

The total estimated fair values of the Notes at the end of fiscal 2022 and 2023 were \$681.8 million and \$660.0 million. The fair values were determined based on the closing trading price per \$100 of the Notes as of the last day of trading of fiscal 2022 and 2023. The fair value of the Notes is primarily affected by the trading price of our common stock and market interest rates. Based on the closing price of our common stock of \$29.91 on the last day of fiscal 2023, the if-converted value of the Notes of \$654.6 million was greater than its principal amount. At the end of fiscal 2023, the remaining term of the Notes is approximately two months.

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

|   | Fiscal Year Ended |          |
|---|-------------------|----------|
|   | 2022              | 2023     |
| Amortization of debt discount <sup>(1)</sup>                | \$ 28,874         | \$ —     |
| Amortization of debt issuance costs <sup>(1)</sup>          | 2,091             | 2,598    |
| Total amortization of debt discount and debt issuance costs | 30,965            | 2,598    |
| Contractual interest expense                                | 732               | 716      |
| Total interest expense related to the Notes                 | \$ 31,697         | \$ 3,314 |
| Effective interest rate of the liability component          | 5.6 %             | 0.6 %    |

<sup>(1)</sup> Fiscal 2023 reflects the adoption of ASU 2020-06 on February 7, 2022 using the modified retrospective method as described in Note 2.

In connection with the offering of the Notes, we paid \$64.6 million to enter into capped call transactions with certain of the underwriters and their affiliates (the Capped Calls), whereby we have the option to purchase up to a total of 21,884,155 shares of our common stock to offset the dilution and/or any cash payments we are required to make in excess of the principal amount upon conversion of the Notes at maturity, with such offset subject to a cap of \$39.66 per share (which represents a premium of 100% over the last reported sales price of our common stock on April 4, 2018), subject to certain adjustments (the Cap Price). However, for conversions prior to maturity, the Capped Calls would be settled at their fair value, which may not completely offset, and may be substantially less than, the value of the consideration in excess of the principal amount of the Notes delivered upon such conversion. The cost of the Capped Calls was accounted for as a reduction to additional paid-in capital on the consolidated balance sheets.

#### **Impact on Earnings Per Share**

Subsequent to the adoption of ASU 2020-06, we compute the potentially dilutive shares of common stock related to the Notes for periods we report net income using the if-converted method. Upon conversion at maturity, there will be no economic dilution from the Notes until the average market price of our common stock exceeds the Cap Price of \$39.66 per share as the exercise of the Capped Calls would offset any dilution from the Notes from the conversion price up to the Cap Price. Capped Calls are excluded from the calculation of diluted earnings per share, as they would be anti-dilutive.

#### **Revolving Credit Facility**

In August 2020, we entered into a Credit Agreement with a consortium of financial institutions and lenders that provides for a five-year, senior secured revolving credit facility of \$300.0 million (Credit Facility). Proceeds from the Credit Facility may be used for general corporate purposes and working capital. The Credit Facility expires, absent default or early termination by us, on the earlier of (i) August 24, 2025 or (ii) 91 days prior to the stated maturity of the Notes unless, on such date and each subsequent day until the Notes are paid in full, the sum of our cash, cash equivalents and marketable securities and the aggregate unused commitments then available to us exceed \$625.0 million.

The annual interest rates applicable to loans under the Credit Facility are, at our option, equal to either a base rate plus a margin ranging from 0.50% to 1.25% or LIBOR (based on one, three or six-month interest periods), subject to a floor of 0%, plus a margin ranging from 1.50% to 2.25%. Interest on revolving loans is payable quarterly in arrears with respect to loans based on the base rate and at the end of an interest period in the case of loans based on LIBOR (or at each three-month interval if the interest period is longer than three months). We are also required to pay a commitment fee on the unused portion of the commitments ranging from 0.25% to 0.40% per annum, payable quarterly in arrears. In March 2021, the ICE Benchmark Administration, the administrator of LIBOR, announced that it will cease publication of LIBOR by June 2023. In March 2023, we amended the Credit Facility to transition LIBOR to the Secured Overnight Financing Rate (SOFR) effective April 1, 2023. The annual interest rate for SOFR borrowings will be equal to term SOFR (based on one, three or six-month interest periods), subject to a floor of 0%, plus a margin ranging from 1.50% to 2.25%.



In February 2022, we repaid, in full, the \$250.0 million outstanding under the Credit Facility. Prior to repayment, the outstanding loan bore weighted-average interest at the one-month LIBOR of approximately 1.65% and 1.60% resulting in interest expense of \$1.4 million and \$4.1 million during fiscal 2021 and 2022 and 1.61% resulting in interest expense of \$0.3 million during the first quarter of fiscal 2023.

Loans under the Credit Facility are collateralized by substantially all of our assets and subject to certain restrictions and two financial ratios measured as of the last day of each fiscal quarter: a Consolidated Leverage Ratio not to exceed 4.5:1 and an Interest Coverage Ratio not to be less than 3:1. We were in compliance with all covenants under the Credit Facility at the end of fiscal 2023.

## **Note 8. Commitments and Contingencies**

### ***Leases***

At the end of fiscal 2023, we had various non-cancelable operating and finance lease commitments for office facilities. Refer to Note 9—Leases for additional information regarding lease commitments.

### ***Contractual Purchase Obligations***

At the end of fiscal 2023, we had \$445.0 million of non-cancelable contractual purchase obligations primarily related to inventory purchase commitments, software service contracts, and hosting arrangements. In order to manage future demand for our products, we enter into agreements with manufacturers and suppliers to procure inventory based upon our demand forecasts.

### ***Letters of Credit***

At the end of fiscal 2022 and 2023, we had outstanding letters of credit in the aggregate amount of \$6.7 million and \$8.0 million in connection with our facility leases. The letters of credit are collateralized by either restricted cash or the Credit Facility and mature on various dates through September 2030.

### ***Legal Matters***

From time to time, we have become involved in claims and other legal matters arising in the normal course of business. We investigate these claims as they arise. Although claims are inherently unpredictable, we currently are not aware of any matters that we expect to have a material adverse effect on our business, financial position, results of operations or cash flows. Accordingly, no material loss contingency has been recorded on our consolidated balance sheet as of the end of fiscal 2023.

### ***Indemnification***

Our arrangements generally include certain provisions for indemnifying customers against liabilities if our products or services infringe a third party's intellectual property rights. Other guarantees or indemnification arrangements include guarantees of product and service performance and standby letters of credit for lease facilities. It is not possible to determine the maximum potential amount under these indemnification obligations due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. To date, we have not incurred any material costs as a result of such obligations and have not accrued any liabilities related to such obligations in the consolidated financial statements. In addition, we indemnify our officers, directors and certain key employees while they are serving in good faith in their respective capacities. To date, there have been no claims under any indemnification provisions.

## **Note 9. Leases**

We lease office facilities under non-cancelable operating lease agreements expiring through July 2032. Our lease agreements do not contain any material residual value guarantees or restrictive covenants.

In June 2022, we entered into an eight-year sublease through July 2030 for a new headquarters facility in Santa Clara, California with total lease payments of \$100.2 million that include rent escalation and abatement clauses. The sublease of space with total lease payments of \$89.4 million commenced in August 2022. Additional space with lease payments of \$10.8 million will commence in May 2024 and end in July 2030 and therefore are excluded from our future lease payments disclosure below.

During fiscal 2021, we ceased use of certain leased facilities that resulted in the recognition of certain exit costs - see Note 10 for further information.

We also lease certain engineering test equipment under financing agreements. These finance leases are three years and contain a bargain purchase option at the end of the respective lease term. It is reasonably certain that the bargain purchase option will be exercised.

The components of lease costs were as follows (in thousands):

|   | Fiscal Year Ended |           |           |
|---|-------------------|-----------|-----------|
|   | 2021              | 2022      | 2023      |
| Fixed operating lease cost                        | \$ 37,411         | \$ 37,598 | \$ 47,533 |
| Variable lease cost <sup>(1)</sup>                | 9,168             | 10,228    | 8,521     |
| Short-term lease cost (12 months or less)         | 5,734             | 4,178     | 3,787     |
| Finance lease cost:                               |                   |           |           |
| Amortization of finance lease right-of-use assets | —                 | 384       | 3,028     |
| Interest on finance lease liabilities             | —                 | 42        | 330       |
| Total finance lease cost                          | \$ —              | \$ 426    | \$ 3,358  |
| Total lease cost                                  | \$ 52,313         | \$ 52,430 | \$ 63,199 |

<sup>(1)</sup> Variable lease cost predominantly included common area maintenance charges.

Supplemental information related to leases is as follows (in thousands):

|   | Fiscal Year Ended |           |
|---|-------------------|-----------|
|   | 2022              | 2023      |
| <b>Operating leases:</b>                                |                   |           |
| Weighted-average remaining lease term (in years)        | 4.5               | 5.2       |
| Weighted-average discount rate                          | 5.7 %             | 6.1 %     |
| <b>Finance leases:</b>                                  |                   |           |
| Finance lease right-of-use assets, gross <sup>(1)</sup> | \$ 3,577          | \$ 17,596 |
| Accumulated amortization <sup>(1)</sup>                 | (384)             | (3,412)   |
| Finance lease right-of-use assets, net <sup>(1)</sup>   | \$ 3,193          | \$ 14,184 |
| Finance lease liabilities, current <sup>(2)</sup>       | 1,035             | 5,432     |
| Finance lease liabilities, non-current <sup>(3)</sup>   | 1,487             | 4,765     |
| Total finance lease liabilities                         | \$ 2,522          | \$ 10,197 |
| Weighted-average remaining lease term (in years)        | 3.6               | 3.3       |
| Weighted-average discount rate                          | 2.7 %             | 5.1 %     |

<sup>(1)</sup> Included in the consolidated balance sheets within property and equipment, net.

<sup>(2)</sup> Included in the consolidated balance sheets within accrued expenses and other liabilities.

<sup>(3)</sup> Included in the consolidated balance sheets within other liabilities, non-current.

Supplemental cash flow information related to leases is as follows (in thousands):

|  | Fiscal Year Ended |           |
|--|-------------------|-----------|
|  | 2022              | 2023      |
| <b>Cash paid for amounts included in the measurement of lease liabilities:</b> |                   |           |
| Operating cash outflows for operating leases                                   | \$ 36,648         | \$ 49,955 |
| Financing cash outflows for finance leases                                     | \$ 1,000          | \$ 6,138  |
| <b>Right-of-use assets obtained in exchange for lease liabilities:</b>         |                   |           |
| Operating leases   | \$ 7,517          | \$ 80,962 |
| Finance leases   | \$ 3,577          | \$ 14,019 |

Future lease payments under our non-cancelable leases at the end of fiscal 2023 are as follows (in thousands):

| Fiscal Years Ending                      | Operating Leases | Finance Leases |
|--|------------------|----------------|
| 2024                                     | \$ 45,153        | \$ 5,839       |
| 2025                                     | 48,315           | 4,728          |
| 2026                                     | 36,366           | 183            |
| 2027                                     | 19,384           | —              |
| 2028                                     | 21,062           | —              |
| Thereafter                               | 44,274           | —              |
| Total future lease payments              | \$ 214,554       | \$ 10,750      |
| Less: imputed interest                   | (38,374)         | (553)          |
| Present value of total lease liabilities | \$ 176,180       | \$ 10,197      |

## Note 10. Restructuring and Other

During fiscal 2021, we carried out the following restructuring and other activities:

- We ceased use of certain leased facilities and recorded an impairment charge of \$7.5 million for operating lease right-of-use assets and leasehold improvements for these leases. In addition, we recognized a liability of \$2.4 million for the remaining lease costs that will continue to be incurred without benefit to us.
- We effected workforce realignment plans to streamline our operations and recognized \$12.2 million of restructuring costs related to one-time involuntary termination benefit costs. The restructuring charges are included in restructuring and other expenses in our consolidated statement of operations. All amounts were paid prior to the end of fiscal 2022.
- We incurred incremental costs of \$9.8 million directly related to the COVID-19 pandemic. These costs primarily included the write-off of marketing commitments no longer deemed to have value for the remainder of fiscal 2021, estimated non-recoverable costs for internal events that could not be held, and hazard related premiums to support manufacturing operations. Of these costs, \$8.9 million is included in restructuring and other expenses and \$0.9 million is included in cost of revenue in our consolidated statements of operations for fiscal 2021.

## Note 11. Stockholders' Equity

### **Preferred Stock**

We have 20,000,000 authorized shares of undesignated preferred stock, the rights, preferences and privileges of which may be designated from time to time by our Board of Directors. At the end of fiscal 2023, there were no shares of preferred stock issued or outstanding.

### **Class A and Class B Common Stock**

We have two classes of authorized common stock, Class A common stock, which we refer to as our "common stock", and Class B common stock. We have 2,000,000,000 authorized shares of Class A common stock and 250,000,000 authorized shares of Class B common stock, with each class having a par value of \$0.0001 per share. At the end of fiscal 2023, 304,076,234 shares of Class A common stock were issued and outstanding.

### **Common Stock Reserved for Issuance**

At the end of fiscal 2023, we had reserved shares of common stock for future issuance as follows:

|  |                   |
|--|-------------------|
| Shares underlying outstanding stock options                    | 9,268,498         |
| Shares underlying outstanding restricted stock units           | 26,760,520        |
| Shares reserved for future equity awards                       | 20,661,582        |
| Shares reserved for future employee stock purchase plan awards | 5,309,812         |
| Total  | <u>62,000,412</u> |

### **Share Repurchase Program**

In August 2019, our Board of Directors approved a stock repurchase program to repurchase up to \$150.0 million of our common stock, which was completed in the fourth quarter of fiscal 2021. In February 2021, our Board of Directors authorized the repurchase of up to an additional \$200.0 million of our common stock, which was completed in the fourth quarter of fiscal 2022. In March 2022, our Board of Directors authorized the repurchase of up to an additional \$250.0 million of our common stock, of which \$31.1 million remained available at the end of fiscal 2023. In March 2023, our Board of Directors authorized the repurchase of up to an additional \$250.0 million of our common stock. The authorization allows us to repurchase shares of our common stock opportunistically and will be funded from available working capital. Repurchases may be made at management's discretion from time to time on the open market through privately negotiated transactions, transactions structured through investment banking institutions, block purchase techniques, 10b5-1 trading plans, or a combination of the foregoing. The share repurchase program does not obligate us to acquire any of our common stock, has no end date, and may be suspended or discontinued by us at any time without prior notice.

We record the difference between cash paid for stock repurchases and underlying par value as a reduction to additional paid-in capital, to the extent the repurchases does not cause this balance to be reduced below zero, at which point the difference would be recorded as a reduction to accumulated deficit. During fiscal 2021, we repurchased and retired 9,526,556 shares of common stock at an average purchase price of \$14.17 per share for an aggregate repurchase price of \$135.0 million. During fiscal 2022, we repurchased and retired 8,489,168 shares of common stock at an average purchase price of \$23.56 per share for an aggregate repurchase price of \$200.0 million. During fiscal 2023, we repurchased and retired 7,832,229 shares of common stock at an average purchase price of \$27.95 per share for an aggregate repurchase price of \$218.9 million. Since the end of fiscal 2023, we have repurchased \$31.1 million of additional shares.

## **Note 12. Equity Incentive Plans**

### ***Equity Incentive Plans***

We maintain two equity incentive plans: the 2009 Equity Incentive Plan (the 2009 Plan) and the 2015 Equity Incentive Plan (the 2015 Plan). The 2015 Plan serves as the successor to our 2009 Plan and provides for grants of incentive stock options to our employees and non-statutory stock options, stock appreciation rights, restricted stock, RSUs, performance stock awards, performance cash awards, and other forms of stock awards to our employees, directors and consultants. Our equity awards generally vest over a two to four year period and expire no later than ten years from the date of grant. Starting in the fourth quarter of fiscal 2018, we discontinued granting stock options.

We initially reserved 27,000,000 shares of our common stock for issuance under our 2015 Plan. The number of shares reserved for issuance under our 2015 Plan increases automatically on the first day of each fiscal year, for a period of not more than ten years, commencing on February 1, 2016, in an amount equal to 5% of the total number of shares of our capital stock outstanding as of the immediately preceding January 31 (the Evergreen Increase). In March 2022, our Board of Directors approved an amendment and restatement of the 2015 Plan to clarify the effect of our change to a 52/53 week fiscal year in September 2019 on the Evergreen Increase.

We net-share settle equity awards held by certain employees by withholding shares upon vesting to satisfy tax withholding obligations. The shares withheld to satisfy employee tax withholding obligations are returned to our 2015 Plan and will be available for future issuance. Payments for employees' tax obligations to the tax authorities are recognized as a reduction to additional paid-in capital and reflected as a financing activity in our consolidated statements of cash flows.

### ***2015 Amended and Restated Employee Stock Purchase Plan***

Our 2015 Employee Stock Purchase Plan was amended and restated in fiscal 2020 (2015 ESPP). A total of 3,500,000 shares of common stock was initially reserved for issuance under the 2015 ESPP and an additional 5,000,000 shares of common stock were added in connection with the amendment and restatement. The number of shares reserved for issuance under our 2015 ESPP increases automatically on the first day of February of each of 2016 through 2025, in an amount equal to the lesser of (i) 1% of the total number of shares of our capital stock outstanding as of the immediately preceding January 31, and (ii) 3,500,000 shares of common stock.

Our Board of Directors (or a committee thereof) has the authority to establish the length and terms of the offering periods and purchase periods and the purchase price of the shares of common stock which may be purchased under the plan. The current offering terms allow eligible employees to purchase shares of our common stock at a discount through payroll deductions of up to 30% of their eligible compensation, subject to a cap of 3,000 shares on any purchase date, a dollar cap of \$7,500 per purchase period, or \$25,000 in any calendar year (as determined under applicable tax rules). The current terms also allow for a 24-month offering period beginning March 16th and September 16th of each year, with each offering period consisting of four 6 month purchase periods, subject to a reset provision. Further, currently, on each purchase date, eligible employees may purchase our common stock at a price per share equal to 85% of the lesser of the fair market value of our common stock (1) on the first trading day of the applicable offering period or (2) the purchase date.

Under the reset provision currently authorized, if the closing stock price on the offering date of a new offering falls below the closing stock price on the offering date of an ongoing offering, the ongoing offering would terminate immediately following the purchase of ESPP shares on the purchase date immediately preceding the new offering and participants in the terminated ongoing offering would automatically be enrolled in the new offering (ESPP reset), resulting in a modification charge to be recognized over the new offering period. During fiscal 2021 and 2023, ESPP resets resulted in total modification charges of \$23.8 million and \$10.4 million, respectively, to be recognized over their new offering periods. There was no ESPP reset during fiscal 2022.

During fiscal 2021, 2022 and 2023, we recognized \$25.8 million, \$35.4 million and \$22.9 million, of stock-based compensation expense related to our 2015 ESPP. At the end of fiscal 2023, total unrecognized stock-based compensation cost related to our 2015 ESPP was \$31.5 million, which is expected to be recognized over a weighted-average period of approximately 1.6 years.

### Stock Options

A summary of the stock option activity under our equity incentive plans and related information is as follows:

|  | Options Outstanding |                                 | Weighted-Average Remaining Contractual Life (Years) | Aggregate Intrinsic Value (in thousands) |
|--|---------------------|---------------------------------|---|--|
|  | Number of Shares    | Weighted-Average Exercise Price |   |  |
| Balance at the end of fiscal 2022                | 12,268,938          | \$ 10.25                        | 3.5   | \$ 198,266                               |
| Options exercised                                | (2,988,068)         | 8.29                            |   |  |
| Options forfeited                                | (12,372)            | 1.83                            |   |  |
| Balance at the end of fiscal 2023                | 9,268,498           | \$ 10.90                        | 2.7   | \$ 176,674                               |
| Vested and exercisable at the end of fiscal 2023 | 9,077,014           | \$ 11.04                        | 2.6   | \$ 171,315                               |

The aggregate intrinsic value of options vested and exercisable at the end of fiscal 2023 is calculated based on the difference between the exercise price and the closing price of \$29.91 of our common stock on the last day of fiscal 2023. The aggregate intrinsic value of options exercised during fiscal 2021, 2022 and 2023 was \$118.8 million, \$105.1 million and \$63.5 million.

The total grant date fair value of options vested during fiscal 2021, 2022 and 2023 was \$20.1 million, \$16.5 million and \$7.0 million.

During fiscal 2021, 2022 and 2023, we recognized \$8.6 million, \$7.7 million and \$4.9 million, of stock-based compensation expense related to stock options. At the end of fiscal 2023, total unrecognized employee stock-based compensation cost related to outstanding options was \$2.4 million, which is expected to be recognized over a weighted-average period of 1.1 years.

### Determination of Fair Value

The fair value of stock options granted to employees and to be purchased under ESPP is estimated on the grant date using the Black-Scholes option pricing model. This valuation model for stock-based compensation expense requires us to make assumptions and judgments about the variables used in the calculation including the fair value of the underlying common stock, expected term, the expected volatility of the common stock, a risk-free interest rate and expected dividend yield. The assumptions used for the periods presented are as follows:

|                                     | Fiscal Year Ended |                   |                   |
|-------------------------------------|-------------------|-------------------|-------------------|
|                                     | 2021              | 2022              | 2023              |
| <b>Employee Stock Options</b>       |                   |                   |                   |
| Expected term (in years)            | 5.65              | n/a               | n/a               |
| Expected volatility                 | 52.07%            | n/a               | n/a               |
| Risk-free interest rate             | 0.3%              | n/a               | n/a               |
| Dividend rate                       | —                 | n/a               | n/a               |
| Fair value of common stock          | \$15.79           | n/a               | n/a               |
| <b>Employee Stock Purchase Plan</b> |                   |                   |                   |
| Expected term (in years)            | 0.5 - 2.0         | 0.5 - 2.0         | 0.5 - 2.0         |
| Expected volatility                 | 52% - 113%        | 44% - 61%         | 45% - 54%         |
| Risk-free interest rate             | 0.1% - 0.4%       | 0.1% - 0.2%       | 0.9% - 4.0%       |
| Dividend rate                       | —                 | —                 | —                 |
| Fair value of common stock          | \$9.07 - \$15.26  | \$23.63 - \$26.69 | \$28.73 - \$31.68 |

The assumptions used in the Black-Scholes option pricing model were determined as follows.

*Fair Value of Common Stock*—We use the market closing price of our common stock as reported on the New York Stock Exchange to determine the fair value of our common stock at each grant date.

*Expected Term*—The expected term represents the period that our stock-based awards are expected to be outstanding. The expected term assumptions were determined based on the vesting terms, exercise terms and contractual lives of the stock options and ESPP purchase rights.

*Expected Volatility*—The expected volatility for stock options and ESPP purchase rights is based on the historical volatility of our common stock for a period equivalent to the expected term of the stock option grants and ESPP purchase rights.

*Risk-Free Interest Rate*—The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the expected term of the stock option grants and ESPP purchase rights.

*Dividend Rate*—We have never declared or paid any cash dividends and do not plan to pay cash dividends in the foreseeable future, and, therefore, use an expected dividend yield of zero.

### **RSUs and PRSUs**

A summary of the RSU and PRSU activity under our equity incentive plans and related information is as follows:

|  | <b>Number of RSUs and PRSUs Outstanding</b> | <b>Weighted-Average Grant Date Fair Value</b> | <b>Aggregate Intrinsic Value (in thousands)</b> |
|--|---|---|---|
| Unvested balance at the end of fiscal 2022 | 28,712,878                                  | \$ 19.53                                      | \$ 757,446                                      |
| Granted                                    | 15,319,768                                  | 29.67   |   |
| Vested                                     | (13,915,802)                                | 20.05   |   |
| Forfeited                                  | (3,356,324)                                 | 21.75   |   |
| Unvested balance at the end of fiscal 2023 | <u>26,760,520</u>                           | \$ 24.78                                      | \$ 800,407                                      |

During fiscal 2023, we granted 1,147,187 shares of PRSUs, at a target percentage of 100%, with both performance and service vesting conditions payable in common stock, from 0% to 150% of the target number granted, contingent upon the degree to which the fiscal 2023 performance condition is met. A total of 1,770,282 shares of PRSUs were earned at the end of fiscal 2023 based on the fiscal 2023 performance conditions achieved and a portion of these shares are subject to service conditions through the remaining vesting periods. The incremental shares of PRSUs earned will be granted in the first quarter of fiscal 2024.

The aggregate fair value, as of the respective vesting dates, of RSUs and PRSUs that vested during fiscal 2021, 2022 and 2023 was \$183.4 million, \$322.2 million and \$402.7 million.

During fiscal 2021, 2022 and 2023, we recognized \$199.1 million, \$242.1 million and \$299.7 million in stock-based compensation expense related to RSUs and PRSUs. At the end of fiscal 2023, total unrecognized employee compensation cost related to unvested RSUs and PRSUs was \$588.4 million, which is expected to be recognized over a weighted-average period of 2.7 years.

### **Restricted Stock**

A summary of the restricted stock activity under our 2015 Plan and related information is as follows:

|  | <b>Number of Restricted Stock Outstanding</b> | <b>Weighted-Average Grant Date Fair Value</b> | <b>Aggregate Intrinsic Value (in thousands)</b> |
|--|---|---|---|
| Unvested balance at the end of fiscal 2022 | 54,977  | \$ 20.02                                      | \$ 1,450  |
| Vested                                     | (54,977)                                      | 20.02   |   |
| Forfeited                                  | —   | —   |   |
| Unvested balance at the end of fiscal 2023 | <u>—</u>                                      | \$ —  | \$ —  |

The aggregate fair value of restricted stock that vested during fiscal 2021, 2022 and 2023 was \$18.3 million, \$10.4 million and \$1.9 million.

During fiscal 2021 and 2022, we recognized \$9.3 million and \$1.8 million in stock-based compensation expense related to restricted stock. The remaining stock-based compensation expense recognized related to restricted stock was not material during fiscal 2023.



### **Stock-Based Compensation Expense**

The following table summarizes the components of stock-based compensation expense recognized in the consolidated statements of operations (in thousands):

|  | Fiscal Year Ended |                   |                   |
|--|-------------------|-------------------|-------------------|
|  | 2021              | 2022              | 2023              |
| Cost of revenue—product                | \$ 4,001          | \$ 6,334          | \$ 10,245         |
| Cost of revenue—subscription services  | 14,979            | 21,240            | 22,630            |
| Research and development               | 117,220           | 142,264           | 161,694           |
| Sales and marketing                    | 65,248            | 71,439            | 72,507            |
| General and administrative             | 40,896            | 45,686            | 60,541            |
| Total stock-based compensation expense | <u>\$ 242,344</u> | <u>\$ 286,963</u> | <u>\$ 327,617</u> |

The tax benefit related to stock-based compensation expense for all periods presented was not material.

### **Note 13. Net Income (Loss) per Share Attributable to Common Stockholders**

Basic and diluted net income (loss) per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. Basic net income (loss) per share attributable to common stockholders is computed by dividing the net income (loss) attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period, less shares subject to repurchase. Diluted net income (loss) per share attributable to common stockholders is computed by giving effect to all potentially dilutive common stock equivalents, including our outstanding stock options, common stock related to unvested RSUs and PRSUs, unvested restricted stock, the shares underlying the conversion option in our Notes to the extent dilutive, and common stock issuable pursuant to the ESPP. The adoption of ASU 2020-06 at the beginning of fiscal 2023 eliminates the treasury stock method and instead requires the application of the if-converted method to calculate the impact of our Notes on diluted EPS. Using this method, the numerator is affected by adding back interest expense related to the Notes and the denominator is affected by including the effect of potential share settlement, if the effect is dilutive. All potentially dilutive common stock equivalents, including from our Notes, have been excluded from the calculation of diluted net loss per share attributable to common stockholders in periods of net loss as their effect is anti-dilutive.

The following table sets forth the computation of basic and diluted net income (loss) per share attributable to common stockholders (in thousands, except per share data):

|  | Fiscal Year Ended   |                     |                  |
|--|---------------------|---------------------|------------------|
|  | 2021                | 2022                | 2023             |
| <b>Numerator:</b>  |                     |                     |                  |
| Net income (loss) attributable to common stockholders, basic   | \$ (282,076)        | \$ (143,259)        | \$ 73,071        |
| Add: Interest charges related to our Notes   | —                   | —                   | 3,314            |
| Net income (loss) attributable to common stockholders, diluted   | <u>\$ (282,076)</u> | <u>\$ (143,259)</u> | <u>\$ 76,385</u> |
| <b>Denominator:</b>  |                     |                     |                  |
| Weighted-average shares used in computing net income (loss) per share attributable to common stockholders, basic   | 267,824             | 285,882             | 299,478          |
| Add: Dilutive effect of common stock equivalents   | —                   | —                   | 39,706           |
| Weighted-average shares used in computing net income (loss) per share attributable to common stockholders, diluted | <u>267,824</u>      | <u>285,882</u>      | <u>339,184</u>   |
| Net income (loss) per share attributable to common stockholders, basic   | \$ (1.05)           | \$ (0.50)           | \$ 0.24          |
| Net income (loss) per share attributable to common stockholders, diluted   | \$ (1.05)           | \$ (0.50)           | \$ 0.23          |

The following weighted-average outstanding shares of common stock equivalents were excluded from the computation of diluted net income (loss) per share attributable to common stockholders for the periods presented because including them would have been anti-dilutive (in thousands):

|  | Fiscal Year Ended |               |               |
|--|-------------------|---------------|---------------|
|  | 2021              | 2022          | 2023          |
| Stock options to purchase common stock     | 23,180            | 15,686        | 10,516        |
| Unvested RSUs and PRSUs                    | 31,980            | 32,491        | 29,780        |
| Unvested restricted stock                  | 1,145             | 257           | 6             |
| Shares related to convertible senior notes | 21,884            | 21,884        | —             |
| Shares issuable pursuant to the ESPP       | 2,148             | 2,122         | 885           |
| Total                                      | <u>80,337</u>     | <u>72,440</u> | <u>41,187</u> |

**Note 14. Other Income (Expense), Net**

Other income (expense), net consists of the following (in thousands):

|  | Fiscal Year Ended |                    |                 |
|--|-------------------|--------------------|-----------------|
|  | 2021              | 2022               | 2023            |
| Interest income <sup>(1)</sup>               | \$ 17,442         | \$ 9,371           | \$ 17,320       |
| Interest expense <sup>(2)</sup>              | (31,403)          | (36,677)           | (4,749)         |
| Foreign currency transactions gains (losses) | 2,507             | (5,235)            | (8,345)         |
| Other income                                 | 2,327             | 2,443              | 4,069           |
| <b>Total other income (expense), net</b>     | <b>\$ (9,127)</b> | <b>\$ (30,098)</b> | <b>\$ 8,295</b> |

(1) Interest income includes interest income related to our cash, cash equivalents and marketable securities and non-cash interest income (expense) related to accretion (amortization) of the discount (premium) on marketable securities.

(2) Interest expense includes non-cash interest expense related to amortization of debt discount and debt issuance costs, contractual interest expense related to our debt and accretion of our finance lease liabilities.

**Note 15. Income Taxes**

The geographical breakdown of income (loss) before provision for income taxes is as follows (in thousands):

|               | Fiscal Year Ended   |                     |                  |
|---------------|---------------------|---------------------|------------------|
|               | 2021                | 2022                | 2023             |
| Domestic      | \$ (312,119)        | \$ (192,058)        | \$ 39,004        |
| International | 41,959              | 63,562              | 52,804           |
| <b>Total</b>  | <b>\$ (270,160)</b> | <b>\$ (128,496)</b> | <b>\$ 91,808</b> |

The components of the provision for income taxes are as follows (in thousands):

|                                   | Fiscal Year Ended |                  |                  |
|-----------------------------------|-------------------|------------------|------------------|
|                                   | 2021              | 2022             | 2023             |
| <b>Current:</b>                   |                   |                  |                  |
| State                             | \$ 442            | \$ 592           | \$ 5,999         |
| Foreign                           | 8,006             | 12,525           | 12,020           |
| <b>Total</b>                      | <b>\$ 8,448</b>   | <b>\$ 13,117</b> | <b>\$ 18,019</b> |
| <b>Deferred:</b>                  |                   |                  |                  |
| Federal                           | \$ (218)          | \$ —             | \$ (639)         |
| State                             | —                 | —                | (99)             |
| Foreign                           | 3,686             | 1,646            | 1,456            |
| <b>Total</b>                      | <b>\$ 3,468</b>   | <b>\$ 1,646</b>  | <b>\$ 718</b>    |
| <b>Provision for income taxes</b> | <b>\$ 11,916</b>  | <b>\$ 14,763</b> | <b>\$ 18,737</b> |

The reconciliation of income taxes at the federal statutory income tax rate to the provision for income taxes is as follows (in thousands):

|                                      | Fiscal Year Ended |                  |                  |
|--------------------------------------|-------------------|------------------|------------------|
|                                      | 2021              | 2022             | 2023             |
| Tax at federal statutory rate        | \$ (56,734)       | \$ (26,984)      | \$ 19,280        |
| State tax, net of federal benefit    | 349               | 468              | 4,625            |
| Stock-based compensation expense     | (604)             | (19,658)         | (11,976)         |
| Research and development tax credits | (14,138)          | (16,783)         | (26,634)         |
| U.S. taxes on foreign income         | 14,021            | 25,059           | 19,065           |
| Foreign rate differential            | 2,282             | (1,698)          | (425)            |
| Withholding tax                      | 34                | 143              | 2,339            |
| Change in valuation allowance        | 63,146            | 48,270           | 10,631           |
| Non-deductible expenses              | —                 | 4,381            | 2,091            |
| Other                                | 3,560             | 1,565            | (259)            |
| Provision for income taxes           | <u>\$ 11,916</u>  | <u>\$ 14,763</u> | <u>\$ 18,737</u> |

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The significant components of our deferred tax assets and liabilities were as follows (in thousands):

|   | At the End of Fiscal |                     |
|---|----------------------|---------------------|
|   | 2022                 | 2023                |
| Deferred tax assets:                                  |                      |                     |
| Net operating loss carryforwards                      | \$ 369,904           | \$ 198,495          |
| Tax credit carryover                                  | 134,085              | 171,775             |
| Accruals and reserves                                 | 22,625               | 34,506              |
| Deferred revenue                                      | 66,242               | 87,026              |
| Stock-based compensation expense                      | 25,247               | 25,564              |
| ASC 842 lease liabilities                             | 28,577               | 40,772              |
| Capitalized research and development                  | —                    | 154,027             |
| Other   | 1,879                | 4,950               |
| Total deferred tax assets                             | <u>\$ 648,559</u>    | <u>\$ 717,115</u>   |
| Valuation allowance                                   | (554,553)            | (598,997)           |
| Total deferred tax assets, net of valuation allowance | <u>\$ 94,006</u>     | <u>\$ 118,118</u>   |
| Deferred tax liabilities:                             |                      |                     |
| Depreciation and amortization                         | \$ (12,992)          | \$ (31,744)         |
| Deferred commissions                                  | (53,219)             | (53,421)            |
| Convertible debt                                      | (4,642)              | —                   |
| ASC 842 right-of-use assets                           | (24,608)             | (36,366)            |
| Acquired intangibles and goodwill                     | (6,850)              | (4,702)             |
| Interest income                                       | (874)                | (2,521)             |
| Total deferred tax liabilities                        | <u>\$ (103,185)</u>  | <u>\$ (128,754)</u> |
| Net deferred tax liabilities                          | <u>\$ (9,179)</u>    | <u>\$ (10,636)</u>  |

At the end of fiscal 2023, the undistributed earnings of \$176.2 million from non-U.S. operations held by our foreign subsidiaries are designated as permanently reinvested outside the U.S. Accordingly, no additional U.S. income taxes or additional foreign withholding taxes have been provided thereon. Determination of the amount of unrecognized deferred tax liability related to these earnings is not practicable.

At the end of fiscal 2023, we had net operating loss carryforwards for federal income tax purposes of approximately \$795.1 million and state income tax purposes of approximately \$578.0 million. The federal net operating loss carryforwards have an indefinite life while the state net operating loss carryforwards begin to expire in 2025.

We had federal and state research and development tax credit carryforwards of approximately \$134.2 million and \$116.0 million at the end of fiscal 2023. The federal research and development tax credit carryforwards will expire commencing in 2028, while the state research and development tax credit carryforwards have no expiration date.

Starting in fiscal 2023, changes to Section 174 of the Internal Revenue Code made by the Tax Cuts and Jobs Act of 2017 no longer permit an immediate deduction for research and development expenditures in the tax year that such costs are incurred. These costs are capitalized resulting in an increase in deferred tax assets and state income taxes.

Realization of deferred tax assets is dependent on future taxable income, the existence and timing of which is uncertain. Based on our history of losses, management has determined that it is more likely than not that the U.S. deferred tax assets will not be realized, and accordingly has placed a full valuation allowance on the net U.S. deferred tax assets. The valuation allowance increased by \$70.1 million and \$44.4 million, respectively, during fiscal 2022 and 2023.

Utilization of the net operating loss carryforwards and credits may be subject to substantial annual limitation due to the ownership change limitations provided by Section 382 of the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

### Uncertain Tax Positions

The activity related to the unrecognized tax benefits is as follows (in thousands):

|  | Fiscal Year Ended |           |           |
|--|-------------------|-----------|-----------|
|  | 2021              | 2022      | 2023      |
| Gross unrecognized tax benefits—beginning balance            | \$ 28,570         | \$ 39,571 | \$ 51,582 |
| Decreases related to tax positions taken during prior years  | (345)             | (173)     | —         |
| Increases related to tax positions taken during prior years  | 1,881             | 1,201     | 2,172     |
| Increases related to tax positions taken during current year | 9,465             | 10,983    | 15,143    |
| Gross unrecognized tax benefits—ending balance               | \$ 39,571         | \$ 51,582 | \$ 68,897 |

At the end of fiscal 2023, our gross unrecognized tax benefit was approximately \$68.9 million, \$6.2 million of which if recognized, would have an impact on the effective tax rate.

At the end of fiscal 2023, we had no current or cumulative interest and penalties related to uncertain tax positions.

It is difficult to predict the final timing and resolution of any particular uncertain tax position. Based on our assessment, including experience and complex judgments about future events, we do not expect that changes in the liability for unrecognized tax benefits during the next twelve months will have a significant impact on our consolidated financial position or results of operations.

We file income tax returns in the U.S. federal jurisdiction as well as many U.S. states and foreign jurisdictions. The tax returns for fiscal years 2009 and forward remain open to examination by the major jurisdictions in which we are subject to tax. The tax returns for fiscal years outside the normal statutes of limitation remain open to audit by tax authorities due to tax attributes generated in those early years, which have been carried forward and may be audited in subsequent years when utilized.

**Note 16. Segment Information**

Our chief operating decision maker is our Chief Executive Officer. Our chief operating decision maker reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. Accordingly, we have a single reportable segment.

**Disaggregation of Revenue**

The following table depicts the disaggregation of revenue by geographic area based on the billing address of our customers and is consistent with how we evaluate our financial performance (in thousands):

|                   | Fiscal Year Ended   |                     |                     |
|-------------------|---------------------|---------------------|---------------------|
|                   | 2021                | 2022                | 2023                |
| United States     | \$ 1,195,428        | \$ 1,580,022        | \$ 1,971,757        |
| Rest of the world | 488,751             | 600,826             | 781,677             |
| Total revenue     | <u>\$ 1,684,179</u> | <u>\$ 2,180,848</u> | <u>\$ 2,753,434</u> |

**Long-Lived Assets by Geographic Area**

Long-lived assets, which are comprised of property and equipment, net, by geographic area are summarized as follows (in thousands):

|                         | At the End of Fiscal |                   |
|-------------------------|----------------------|-------------------|
|                         | 2022                 | 2023              |
| United States           | \$ 187,228           | \$ 259,131        |
| Rest of the world       | 8,054                | 13,314            |
| Total long-lived assets | <u>\$ 195,282</u>    | <u>\$ 272,445</u> |

**Note 17. 401(k) Plan**

We have a 401(k) savings plan (the 401(k) plan) which qualifies as a deferred salary arrangement under section 401(k) of the Internal Revenue Code. Under the 401(k) plan, participating employees may elect to contribute up to 85% of their eligible compensation, subject to certain limitations. We currently match 50% of employees' contributions up to a maximum of \$4,000 annually. Matching contributions immediately vest. Our contributions to the plan were \$10.2 million, \$11.1 million and \$12.2 million during fiscal 2021, 2022 and 2023.

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

None.

**Item 9A. Controls and Procedures.***Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer (CEO) and Chief Financial Officer (CFO), evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Based on such evaluation, our CEO and CFO concluded that, as of the end of fiscal 2023, our disclosure controls and procedures were designed at a reasonable assurance level and were effective to provide reasonable assurance that 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 the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

*Management's Report on Internal Control over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) and Rule 15d-15(f) of the Exchange Act. Internal control over financial reporting consists of 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) are designed and operated to provide reasonable assurance regarding the reliability of our financial reporting and our process for the preparation of financial statements for external purposes 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. Our management evaluated the effectiveness of our internal control over financial reporting using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control - Integrated Framework (2013)*. Based on the results of our evaluation, our management has concluded that our internal control over financial reporting was effective as of the end of fiscal 2023.

The effectiveness of our internal control over financial reporting as of the end of fiscal 2023 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report, which appears in Part II, Item 8 of this Annual Report on Form 10-K.

*Changes in Internal Control over Financial Reporting*

There was no change 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 fourth quarter of fiscal 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

*Limitations on the Effectiveness of Controls*

In designing and evaluating the disclosure controls and procedures and internal control over financial reporting, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures and internal control over financial reporting 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.

**Item 9B. Other Information.**

None.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.**

Not applicable.



## PART III

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

The information required by this item is incorporated herein by reference to our definitive proxy statement for our 2023 annual meeting of stockholders (2023 Proxy Statement), which will be filed not later than 120 days after the end of our fiscal year ended February 5, 2023.

### **Item 11. Executive Compensation.**

The information required by this item is incorporated herein by reference to our 2023 Proxy Statement.

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

The information required by this item is incorporated herein by reference to our 2023 Proxy Statement.

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

The information required by this item is incorporated herein by reference to our 2023 Proxy Statement.

### **Item 14. Principal Accounting Fees and Services.**

Our independent public accounting firm is Deloitte & Touche LLP, San Jose, CA, PCAOB ID No. 34

The information required by this item is incorporated herein by reference to our 2023 Proxy Statement.

## PART IV

### Item 15. Exhibits, Financial Statement Schedules.

#### (a)(1) Consolidated Financial Statements

We have filed the consolidated financial statements listed in the Index to Consolidated Financial Statements, Schedules, and Exhibits included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

#### (a)(2) Financial Statement Schedules

All financial statement schedules have been omitted because they are not applicable, not material, or the required information is shown in the consolidated financial statements or the notes thereto.

#### (a)(3) Exhibits

The documents set forth below are filed herewith or incorporated herein by reference to the location indicated.

## Exhibit Index

| Exhibit Number | Description  | Incorporation By Reference |              |         |             |
|----------------|--|----------------------------|--------------|---------|-------------|
|                |  | Form                       | SEC File No. | Exhibit | Filing Date |
| 3.1            | <a href="#">Amended and Restated Certificate of Incorporation.</a>   | 10-Q                       | 001-37570    | 3.1     | 12/11/2015  |
| 3.2            | <a href="#">Amended and Restated Bylaws.</a>   | S-1                        | 333-206312   | 3.4     | 9/9/2015    |
| 4.1            | <a href="#">Form of Class A Common Stock Certificate of the Company.</a>   | S-1                        | 333-206312   | 4.1     | 9/9/2015    |
| 4.2            | Reference is made to <a href="#">Exhibits 3.1</a> and <a href="#">3.2</a> .  | —                          | —            | —       | —           |
| 4.3            | <a href="#">Indenture dated as of April 9, 2018 by and between Pure Storage, Inc. and U.S. Bank National Association, as Trustee</a>   | 8-K                        | 001-37570    | 4.1     | 4/10/2018   |
| 4.4            | <a href="#">Form of Global Note, representing Pure Storage, Inc.'s 0.125% Convertible Senior Notes due 2023 (included as Exhibit A to the Indenture incorporated by reference as Exhibit 4.3 hereto)</a>   | 8-K                        | 001-37570    | 4.1     | 4/10/2018   |
| 4.5            | <a href="#">Description of Registrant's Securities.</a>  | 10-K                       | 001-37570    | 4.5     | 3/27/2020   |
| 10.1+          | <a href="#">Pure Storage, Inc. Amended and Restated 2009 Equity Incentive Plan.</a>  | S-1                        | 333-206312   | 10.2    | 8/12/2015   |
| 10.2+          | <a href="#">Forms of Grant Notice, Stock Option Agreement and Notice of Exercise under the Pure Storage, Inc. 2009 Equity Incentive Plan.</a>  | S-1                        | 333-206312   | 10.3    | 8/12/2015   |
| 10.3+          | <a href="#">Pure Storage, Inc. 2015 Equity Incentive Plan.</a>   | 10-K                       | 001-37570    | 10.3    | 4/7/2022    |
| 10.4+          | <a href="#">Forms of Grant Notice, Stock Option Agreement and Notice of Exercise under the Pure Storage, Inc. 2015 Equity Incentive Plan.</a>  | S-1                        | 333-206312   | 10.5    | 9/24/2015   |
| 10.5+          | <a href="#">Form of Restricted Stock Unit Grant Notice and Award Agreement under the Pure Storage, Inc. 2015 Equity Incentive Plan.</a>  | 10-K                       | 001-37570    | 10.6    | 3/25/2016   |
| 10.6+          | <a href="#">Form of Restricted Stock Award Grant Notice and Award Agreement under the Pure Storage, Inc. 2015 Equity Incentive Plan.</a>   | 8-K                        | 001-37570    | 10.1    | 3/16/2018   |
| 10.7+          | <a href="#">Pure Storage, Inc. Amended and Restated 2015 Employee Stock Purchase Plan</a>  | 10-Q                       | 001-37570    | 10.1    | 8/30/2019   |
| 10.8+          | <a href="#">Form of Indemnity Agreement, by and between Pure Storage, Inc. and each director and executive officer.</a>  | S-1                        | 333-206312   | 10.7    | 9/9/2015    |
| 10.9+          | <a href="#">Offer Letter, by and between Pure Storage, Inc. and Charles Giancarlo, dated August 22, 2017.</a>  | 10-Q                       | 001-37570    | 10.1    | 12/8/2017   |
| 10.10+         | <a href="#">Offer Letter by and between Pure Storage, Inc. and Kevan Kryslar, dated November 15, 2019</a>  | 10-Q                       | 001-37570    | 10.2    | 12/9/2019   |
| 10.11+         | <a href="#">Pure Storage, Inc. Change in Control and Severance Benefit Plan.</a>   | 10-Q                       | 001-37570    | 10.12   | 12/9/2020   |
| 10.12*         | <a href="#">Credit Agreement, originally dated as of August 24, 2020 and as amended as of March 15, 2023 among Pure Storage, Inc., the Lenders from time to time party hereto and Barclays Bank PLC, as administrative agent, issuing bank and swingline lender.</a> | —                          | —            | —       | —           |
| 10.13+         | <a href="#">Pure Storage, Inc. Employee Cash Incentive Plan.</a>   | 8-K                        | 001-37570    | 10.2    | 3/16/2018   |

| Exhibit Number | Description   | Incorporation By Reference |              |         |             |
|----------------|---|----------------------------|--------------|---------|-------------|
|                |   | Form                       | SEC File No. | Exhibit | Filing Date |
| 10.14+         | <a href="#">Offer Letter by and between Pure Storage, Inc. and Ajay Singh, dated December 8, 2020</a>   | 10-K                       | 001-37570    | 10.16   | 4/7/2022    |
| 10.15*+        | <a href="#">Pure Storage, Inc. Deferred Compensation Plan, effective January 1, 2023</a>  | —                          | —            | —       | —           |
| 21.1*          | <a href="#">Subsidiaries of the Registrant.</a>   | —                          | —            | —       | —           |
| 23.1*          | <a href="#">Consent of Deloitte &amp; Touche LLP, independent registered public accounting firm.</a>  | —                          | —            | —       | —           |
| 24.1*          | <a href="#">Power of Attorney (see signature page to this report).</a>  | —                          | —            | —       | —           |
| 31.1*          | <a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a> | —                          | —            | —       | —           |
| 31.2*          | <a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a> | —                          | —            | —       | —           |
| 32.1**         | <a href="#">Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>                  | —                          | —            | —       | —           |
| 99.1           | <a href="#">Form of Confirmation for Capped Call Transactions.</a>  | 8-K                        | 001-37570    | 99.1    | 4/10/2018   |
| 101.INS        | XBRL Instance Document  | —                          | —            | —       | —           |
| 101.SCH        | XBRL Taxonomy Extension Schema Document   | —                          | —            | —       | —           |
| 101.CAL        | XBRL Taxonomy Extension Calculation Linkbase Document   | —                          | —            | —       | —           |
| 101.DEF        | XBRL Taxonomy Extension Definition Linkbase Document  | —                          | —            | —       | —           |
| 101.LAB        | XBRL Taxonomy Extension Label Linkbase Document   | —                          | —            | —       | —           |
| 101.PRE        | XBRL Taxonomy Extension Presentation Linkbase Document  | —                          | —            | —       | —           |
| 104            | Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document (included in Exhibit 101)  | —                          | —            | —       | —           |

\* Filed herewith.

\*\* Furnished herewith.

+ Indicates management contract or compensatory plan.

**Item 16. Form 10-K Summary.**

None.

**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.

Date: March 31, 2023

**PURE STORAGE, INC.**

By: \_\_\_\_\_  
/s/ Charles Giancarlo  
Charles Giancarlo  
Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitute and appoint Charles Giancarlo, Kevan Kryslar, John Colgrove and Nicole Armstrong, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place, and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1934, this Annual Report on Form 10-K has been signed by the following persons in the capacities and on the dates indicated.

| Signature   | Title   | Date           |
|---|---|----------------|
| <u>/s/ Charles Giancarlo</u><br>Charles Giancarlo | Chief Executive Officer, Chairman and Director<br><i>(Principal Executive Officer)</i>  | March 31, 2023 |
| <u>/s/ Kevan Kryslar</u><br>Kevan Kryslar         | Chief Financial Officer<br><i>(Principal Financial Officer)</i>                         | March 31, 2023 |
| <u>/s/ Mona Chu</u><br>Mona Chu                   | Vice President and<br>Chief Accounting Officer<br><i>(Principal Accounting Officer)</i> | March 31, 2023 |
| <u>/s/ Scott Dietzen</u><br>Scott Dietzen         | Vice Chairman and Director  | March 31, 2023 |
| <u>/s/ John Colgrove</u><br>John Colgrove         | Chief Visionary Officer and Director  | March 31, 2023 |
| <u>/s/ Andrew Brown</u><br>Andrew Brown           | Director  | March 31, 2023 |
| <u>/s/ John Murphy</u><br>John Murphy             | Director  | March 31, 2023 |
| <u>/s/ Jeff Rothschild</u><br>Jeff Rothschild     | Director  | March 31, 2023 |
| <u>/s/ Roxanne Taylor</u><br>Roxanne Taylor       | Director  | March 31, 2023 |
| <u>/s/ Susan Taylor</u><br>Susan Taylor           | Director  | March 31, 2023 |
| <u>/s/ Greg Tomb</u><br>Greg Tomb                 | Director  | March 31, 2023 |
| <u>/s/ Mallun Yen</u><br>Mallun Yen               | Director  | March 31, 2023 |

**CREDIT AGREEMENT**

Originally dated as of August 24, 2020 and as amended as of March 15, 2023

among

**PURE STORAGE, INC.,**

as Borrower,

**THE LENDERS FROM TIME TO TIME PARTY HERETO,**

and

**BARCLAYS BANK PLC,**

as Administrative Agent

---

**BARCLAYS BANK PLC**

**and**

**HSBC BANK USA, N.A.**

as Joint Lead Arrangers, Joint Bookrunners, and Syndication Agents

**JPMORGAN CHASE BANK, N.A.**

as Joint Lead Arranger and Joint Bookrunner

**DEUTSCHE BANK AG, NEW YORK BRANCH**

**and**

**PNC BANK, NATIONAL ASSOCIATION**

as a Co-Arrangers and Documentation Agents

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## Exhibits

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## **CREDIT AGREEMENT**

THIS CREDIT AGREEMENT (this "Agreement") is made and entered into as of August 24, 2020, by and among PURE STORAGE, INC., a Delaware corporation (the "Borrower"), the several banks and other financial institutions and lenders from time to time party hereto (the "Lenders"), and BARCLAYS BANK PLC, in its capacity as administrative agent for the Lenders (the "Administrative Agent"), as an issuing bank and as swingline lender (the "Swingline Lender").

### **WITNESSETH:**

**WHEREAS**, the Borrower has requested that the Lenders establish a \$300,000,000 revolving credit facility in favor of the Borrower; and

**WHEREAS**, subject to the terms and conditions of this Agreement, the Lenders, the Issuing Banks and the Swingline Lender, to the extent of their respective Commitments as defined herein, are willing severally to establish the requested revolving credit facility, letter of credit subfacility and swingline subfacility in favor of the Borrower.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the Borrower, the Lenders, the Administrative Agent, the Issuing Banks and the Swingline Lender agree as follows:

### **Article I.**

#### **DEFINITIONS; CONSTRUCTION**

Section 1.1 **Definitions.** In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):

"Accepting Lenders" has the meaning specified in Section 2.27(a).

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or a substantially all of any business or division of a Person, (b) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is already a Subsidiary), the survivor of which is a Subsidiary.

"Additional Lender" has the meaning specified in Section 2.23(b).

"Administrative Agent" means Barclays Bank PLC, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Questionnaire" means, with respect to each Lender, an administrative questionnaire in the form provided by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

"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, is Controlled by, or is under common Control with, the specified Person. For the purposes of this definition, "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person,

whether through the ability to exercise voting power, by control or otherwise. The terms “Controlling” and “Controlled” have meanings correlative thereto.

“Aggregate Revolving Commitment Amount” means the aggregate principal amount of the Aggregate Revolving Commitments from time to time. On the Closing Date, the Aggregate Revolving Commitment Amount is \$300,000,000.

“Aggregate Revolving Commitments” means, collectively, all Revolving Commitments of all Lenders at any time outstanding.

“Alternative Currencies” means any foreign currency (that is not Dollars) acceptable to the Administrative Agent and the applicable Issuing Bank; provided that, for each Alternative Currency, such currency is an Eligible Currency.

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction applicable to the Borrower and/or its Subsidiaries concerning or relating to bribery or corruption.

“Applicable Fiscal Quarter” has the meaning specified in Section 6.1.

“Applicable Lending Office” means, for each Lender and for each Type of Loan, the “Lending Office” of such Lender (or an Affiliate of such Lender) designated for such Type of Loan in the Administrative Questionnaire submitted by such Lender or such other office of such Lender (or such Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

“Applicable Margin” means, as of any date, with respect to interest on all Revolving Loans outstanding on such date or the letter of credit fee, as the case may be, the percentage per annum determined by reference to the applicable Consolidated Leverage Ratio in effect on such date as set forth on Schedule I; provided that a change in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio shall be effective on the third Business Day after which the Borrower delivers each of the financial statements required by Section 5.1(a) and (b) and the Compliance Certificate required by Section 5.2(a) for the most-recent fiscal quarter of the Borrower then ended; provided, further, that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate when so required, the Applicable Margin shall be at Level IV as set forth on Schedule I until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Margin shall be determined as provided above. Notwithstanding the foregoing, the Applicable Margin from the Closing Date until the date by which the financial statements and Compliance Certificate for the fiscal quarter ending January 31, 2021 are required to be delivered shall be at Level I as set forth on Schedule I. In the event that any financial statement or Compliance Certificate delivered hereunder is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin based upon the pricing grid set forth on Schedule I (the “Accurate Applicable Margin”) for any period that such financial statement or Compliance Certificate covered, then, so long as this Agreement is still in effect when such inaccuracy is discovered: (i) the Borrower shall immediately deliver to the Administrative Agent a correct financial statement or Compliance Certificate, as the case may be, for such period, (ii) the Applicable Margin shall be adjusted such that after giving effect to the corrected financial statement or Compliance Certificate, as the case may be, the Applicable Margin shall be reset to the Accurate Applicable Margin based upon the pricing grid set forth on Schedule I for such period and (iii) the Borrower shall promptly (and in any event within three (3) Business Days) pay to the Administrative Agent, for the account of the Lenders, the accrued additional interest owing (if any) as a result of such Accurate Applicable Margin for such period (it being understood that no payment Default shall be deemed to have occurred as a result of any such inaccuracy if such payment is so made). The provisions of this definition shall not limit the rights of the Administrative Agent and the Lenders with respect to Section 2.13(c) or Article VIII.

“Applicable Percentage” means, as of any date, with respect to the commitment fee as of such date, the percentage *per annum* determined by reference to the Consolidated Leverage Ratio in effect on such date as set forth on Schedule I; provided that a change in the Applicable Percentage resulting from a change in the Consolidated Leverage Ratio shall be effective on the third Business Day after which the Borrower delivers each of the financial statements required by Section 5.1(a) and (b) and the

Compliance Certificate required by Section 5.2(a) for the most-recent fiscal quarter of the Borrower then ended; provided, further, that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate when so required, the Applicable Percentage shall be at Level IV as set forth on Schedule I until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Percentage shall be determined as provided above. Notwithstanding the foregoing, the Applicable Percentage for the commitment fee from the Closing Date until the date by which the financial statements and Compliance Certificate for the fiscal quarter ending January 31, 2021 are required to be delivered shall be at Level I as set forth on Schedule I. In the event that any financial statement or Compliance Certificate delivered hereunder is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Percentage based upon the pricing grid set forth on Schedule I (the “Accurate Applicable Percentage”) for any period that such financial statement or Compliance Certificate covered, then, so long as this Agreement is still in effect when such inaccuracy is discovered: (i) the Borrower shall immediately deliver to the Administrative Agent a correct financial statement or Compliance Certificate, as the case may be, for such period, (ii) the Applicable Percentage shall be adjusted such that after giving effect to the corrected financial statement or Compliance Certificate, as the case may be, the Applicable Percentage shall be reset to the Accurate Applicable Percentage based upon the pricing grid set forth on Schedule I for such period and (iii) the Borrower shall promptly (and in any event within three (3) Business Days) pay to the Administrative Agent, for the account of the Lenders, the accrued additional commitment fee owing (if any) as a result of such Accurate Applicable Percentage for such period (it being understood that no payment Default shall be deemed to have occurred as a result of any such inaccuracy if such payment is so made). The provisions of this definition shall not limit the rights of the Administrative Agent and the Lenders with respect to Section 2.13(c) or Article VIII.

“Applicable Time” means, with respect to any payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the applicable Issuing Bank to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Approved Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means, collectively, Barclays Bank PLC, HSBC Bank USA, N.A. and JPMorgan Chase Bank, N.A., each in its capacity as a joint lead arranger and joint book runner.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.4(b)) and accepted by the Administrative Agent, in substantially the form of Exhibit A attached hereto or any other form approved by the Administrative Agent.

“Availability Period” means the period from the Closing Date to but excluding the Maturity Date.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.16(d).

“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 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 Product Obligations” mean, collectively, all obligations and other liabilities of any Loan Party to any Bank Product Provider arising with respect to any Bank Products.

“Bank Product Provider” means any Person that, (i) is a Lender or an Affiliate of a Lender at the time it enters into any Bank Product with any Loan Party or such Person is a Lender or an Affiliate of a Lender on the Closing Date and the Bank Product with a Loan Party was entered into on or prior to the Closing Date and (ii) except when the Bank Product Provider is Barclays Bank PLC and its Affiliates, has provided written notice to the Administrative Agent which has been acknowledged by the Borrower of the existence of such Bank Product. In no event shall any Bank Product Provider acting in such capacity be deemed a Lender for purposes hereof to the extent of and as to Bank Products except that each reference to the term “Lender” in Article IX and Section 10.3(b) shall be deemed to include such Bank Product Provider and in no event shall the approval of any such person in its capacity as Bank Product Provider be required in connection with the release or termination of any security interest or Lien of the Administrative Agent.

“Bank Products” means any of the following services: (a) any treasury, depository or other cash management services, including deposit accounts, automated clearing house (ACH) origination and other funds transfer, depository (including cash vault and check deposit), zero balance accounts and sweeps, return items processing, controlled disbursement accounts, overdrafts, interest depository network services, positive pay, lockboxes and lockbox accounts, account reconciliation and information reporting, payables outsourcing, payroll processing, trade finance services, investment accounts and securities accounts, and (b) card services, including credit cards (including purchasing cards and commercial cards), prepaid cards, including payroll, stored value and gift cards, merchant services processing, and debit card services.

“Base Rate” means for any day a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1.0% and (c) Term SOFR published on such day (or if such day is not a Business Day the next previous Business Day) for an Interest Period of one month (taking into account any “floor” under the definition of “Term SOFR”) plus 1.00%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, the Base Rate shall be determined without regard to clause (b) above until the circumstances giving rise to such inability no longer exist and if Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Effective Rate or such Term SOFR shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or such Term SOFR, respectively.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Base Rate Term SOFR Determination Day” has the meaning assigned to such term in the definition of “Term SOFR”.

“Benchmark” means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.16.



“Benchmark Replacement” means with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (a) with respect to Term SOFR Loans, Daily Simple SOFR; or
- (b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment;

provided, that if the Benchmark Replacement would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated syndicated credit facilities at such time.

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

(1) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof)

announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.16 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.16.

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in 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”.

“Borrower” has the meaning set forth in the introductory paragraph hereof.

“Borrowing” means a Revolving Borrowing or a Swingline Borrowing, as the context may require.

“Business Day” means any day that is not a Saturday, Sunday, U.S. Government Securities Business Day or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“Conforming Changes” means, with respect to either the use or administration of any Term Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,”

the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.18 and other technical, administrative or operational matters) that the Administrative Agent, in consultation with the Borrower, decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if, after consultation with the Borrower, the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if, after consultation with the Borrower, the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent, after consultation with the Borrower, decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Capital Lease Obligations” of any Person shall mean all obligations of such Person to pay rent or other amounts under any Capitalized Lease, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP (subject to the provisions in Section 1.3 hereof).

“Capital Stock” means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Exchange Act); provided that Capital Stock shall exclude any Indebtedness convertible into or exchangeable for Capital Stock.

“Capitalized Lease” means, for any Person, each lease (or other arrangement conveying the right to use) of real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP (subject to the provisions in Section 1.3 hereof).

“Cash Collateralize” means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of an Issuing Bank or Swingline Lender (as applicable) and the Lenders, as collateral for Obligations in respect of Letters of Credit, Obligations in respect of Swingline Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the applicable Issuing Bank or Swingline Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the applicable Issuing Bank or the Swingline Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means (a) securities issued or unconditionally guaranteed or insured by the United States government, any member of the European Union whose sovereign debt is rated at least BBB- with a stable outlook by S&P or at least Baa3 with a stable outlook by Moody’s or any other government approved by the Administrative Agent (which approval shall not be unreasonably withheld, conditioned or delayed), (b) securities issued or unconditionally guaranteed or insured by any state of the United States or any agency or instrumentality thereof having maturities of not more than twelve months from the date of acquisition and having one of the two highest ratings obtainable from either S&P or Moody’s, (c) time deposits, certificates of deposit and bankers’ acceptances having maturities of not more than twelve months from the date of acquisition, in each case with any Lender (or an Affiliate of any thereof), or any Person that was a Lender (or an Affiliate thereof) at the time of acquisition thereof, or with any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia or any member of the European Union or any U.S. branch of a foreign bank having at the date of acquisition capital and surplus of not less than \$100,000,000, (d) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (a), (b) and (c) entered into with any bank meeting the qualifications specified in clause (c) above, (e) commercial paper issued by the parent corporation of any Lender or Person that was a Lender (or an

Affiliate thereof) at the time of acquisition thereof, and commercial paper rated, at the time of acquisition, at least “A-1” or the equivalent thereof by S&P or “P-1” or the equivalent thereof by Moody’s and in either case maturing within twelve months after the date of acquisition, (f) deposits maintained with money market funds having total assets in excess of \$300,000,000, (g) demand deposit accounts maintained in the ordinary course of business with banks or trust companies, (h) temporary deposits, of amounts received in the ordinary course of business pending disbursement of such amounts, in demand deposit accounts in banks outside the United States, (i) deposits in mutual funds which invest substantially all of their assets in preferred equities issued by U.S. corporations rated at least “AA” (or the equivalent thereof) by S&P or other assets referred to in clauses (a) through (h) above; provided, that notwithstanding the foregoing, Cash Equivalents shall, in any event, include all cash, cash equivalents and marketable securities as set forth in the Borrower’s balance sheet prepared in accordance with GAAP, (j) investments permitted by the Borrower’s cash investment policy delivered to the Administrative Agent prior to the Closing Date and (k) investments generally equivalent to those referred to in clauses (a) through (j) above denominated in foreign currencies (A) customarily used by Persons for cash management purposes in any jurisdiction outside of the United States or (B) with respect to any Foreign Subsidiaries, by reference to such Foreign Subsidiary’s jurisdiction of organization or any jurisdiction(s) where such Foreign Subsidiary is engaged in material operations.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Exchange Act and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), of Capital Stock representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Borrower or (b) a “change of control” or any comparable term under, and as defined in the Existing Convertible Notes Indenture, unless, in the case of this clause (b), at such time the Borrower is in compliance with the Liquidity Threshold.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty, or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) of 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 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.

“Charges” has the meaning specified in Section 10.12.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans or Term Loans (if applicable) and when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment, a Swingline Commitment, or a commitment to fund Term Loans (if applicable).

“Closing Date” means the date on which the conditions precedent set forth in Section 3.1 have been satisfied or waived in accordance with Section 10.2.

“Code” means the Internal Revenue Code of 1986, as amended and in effect from time to time.

“Collateral” means all property of the Loan Parties (other than Excluded Property), now owned or hereafter acquired upon which a Lien is purported to be created by any Security Document.

“Commitment” means a Revolving Commitment, a Swingline Commitment, or the commitments for any Incremental Facility, or any combination thereof (as the context shall permit or require).

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended and in effect from time to time, and any successor statute.

“Compliance Certificate” means a certificate from a Responsible Officer of the Borrower in the form of, and containing the certifications set forth in, the certificate attached hereto as Exhibit B.

“Computation Date” means (a) the last Business Day of each calendar quarter, (b) (i) each date of issuance, amendment and/or extension of a Letter of Credit denominated in an Alternative Currency and (ii) each date of any payment by any Issuing Bank under any Letter of Credit denominated in an Alternative Currency, and (c) during the continuation of an Event of Default, any Business Day elected by the Administrative Agent in its discretion or upon instruction by the Required Lenders.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Assets” means, at a particular date, all amounts which would be included under total assets on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as at such date, determined in accordance with GAAP.

“Consolidated EBITDA” means, for any period (and calculated without duplication), Consolidated Net Income for such period excluding (a) any extraordinary and non-recurring non-cash expenses, losses, income or gains as determined in accordance with GAAP, (b) charges, premiums, expenses and any gains associated with the issuance, redemption, repurchase, discharge, defeasance or amendments to the terms of Capital Stock or Indebtedness, (c) [reserved], (d) any non-cash income included, and any non-cash deductions made, in determining Consolidated Net Income for such period (other than any deductions which represent the accrual of or a reserve for the payment of cash charges in any future period); provided that cash payments made in any subsequent period in respect of any item for which any such non-cash deduction was excluded in a prior period shall be deemed to reduce Consolidated EBITDA by such amount in such subsequent period, (e) stock compensation expense and non-cash equity linked expense, (f) deferred financing fees (and any write-offs thereof), debt discount and issuance costs, (g) charges related to GAAP acquisition purchase accounting adjustments (including inventory step-up amortization and in-process research and development expenses), (h) writeoffs of goodwill, intangible assets or long-lived assets or asset impairment charges or losses on sale in respect thereof, (i) solely to the extent not otherwise already excluded from Consolidated EBITDA by virtue of another clause of this definition, unusual or infrequent items, restructuring, restructuring-related or other similar charges or expenses (whether or not classified as restructuring charges or expenses under GAAP) and write-downs of excess or obsolete inventory and including the amount of any restructuring, integration, transition, employee severance, facility closing and similar charges accrued during such period, including any charges to establish accruals and reserves or to make payments associated with the reassessment or realignment of the business and operations of the Borrower and its Restricted Subsidiaries, and including the sale or closing of facilities, severance, stay bonuses and curtailments or modifications to pension and post-retirement employee benefit plans, asset write-downs or asset disposals (including abandonment of leased facilities, leasehold improvements and right of use assets), write-downs for purchase and lease commitments, start-up costs for new facilities, writedowns of excess, obsolete or unbalanced inventories, relocation costs which are not otherwise capitalized and any related promotional costs of exiting products or product lines; provided that the aggregate cash amount of all such items, charges or expenses (the “Restructuring Addbacks”) together with the aggregate Cost Savings Addbacks (as defined below) in any period of four consecutive fiscal quarters shall not exceed 25% of Consolidated EBITDA for such period (calculated after giving effect to such addbacks and pro forma adjustments), (j) fees, costs, charges, commissions and expenses or other charges incurred during such period in connection with this Agreement or any Permitted Acquisition or debt financing, debt security issuance, equity security issuance or disposition permitted hereunder (in each case, whether or not consummated) or any amendment or waiver of any documentation governing such Permitted Acquisition, debt financing, debt security issuance, equity security issuance or disposition, (k) foreign exchange gains and losses, (l) expenses with respect to casualty events and (m) any federal, state, local or foreign taxes, plus, to the extent deducted in determining Consolidated Net Income, the sum of (A) interest expense, (B) any expenses for taxes, (C) depreciation and amortization expense (including amortization of right of use assets and amortization of software development costs for internal use and excluding for the avoidance of

doubt software development costs related to cost of goods sold and software products), (D) minority interests in income (or losses) of Restricted Subsidiaries, (E) any earn-out obligation and contingent consideration obligations (including adjustments thereof and purchase price adjustments) incurred in connection with any Investment made in compliance with Section 7.6 so long as (I) such compliance was tested as if such earnout or contingent consideration required to be paid other than in common equity interests were treated as Consolidated Total Debt for purposes of testing pro forma compliance with any of the covenants set forth in Article VI, as applicable and (II) such amounts shall be treated as an expense when paid in cash for the period in which paid and (F) net equity earnings (and losses) in Affiliates (excluding Subsidiaries). For purposes of calculating the ratios set forth in Article VI (including any pro forma calculation thereof) and any other financial ratio or test (including the Consolidated Leverage Ratio and the Consolidated Secured Leverage Ratio), Consolidated EBITDA for any fiscal period shall in any event (a) include the Consolidated EBITDA for such fiscal period of any entity acquired by the Borrower or any of its Restricted Subsidiaries in an Acquisition during such period (or in the case of any pro forma financial calculation, any Acquisition consummated after such period and prior to the transaction or event in respect of which such pro forma financial calculation is being made) and (b) give pro forma effect to cost savings, operating expense reductions, other operating improvements and initiatives and synergies related to any Material Transaction that are (A) permitted under Regulation S-X or (B) projected by a Responsible Officer in good faith to be reasonably anticipated to be realizable within 18 months of the date of such Material Transaction (which will be added to Consolidated EBITDA as so projected until fully realized, and calculated on a pro forma basis, as though the full recurring benefit of such cost savings, operating expense reductions, other operating improvements and initiatives and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided that with respect to this clause (B) such cost savings, operating expense reductions, other operating improvements and initiatives or synergies are reasonably identifiable and factually supportable (in the good faith determination of a Responsible Officer of the Borrower); provided further that, the aggregate amount of cost savings, operating expense reductions, other operating improvements and initiatives and synergies related to any Material Transaction added back pursuant to this clause (B) (the “Cost Savings Addbacks”) together with the aggregate Restructuring Addbacks in any period of four consecutive fiscal quarters shall not exceed 25% of Consolidated EBITDA for such period (calculated after giving effect to such addbacks and pro forma adjustments).

“Consolidated Interest Expense” means, for any period, the amount which would, in conformity with GAAP, be set forth opposite the caption “interest expense” (or any like caption) on a consolidated income statement of the Borrower and its Restricted Subsidiaries for such period; provided, that Consolidated Interest Expense for any period shall exclude (i) fees payable in respect of such period under Section 2.14 or analogous provisions under any other debt instruments or documents, (ii) any amortization, expensing or write-off of deferred financing fees, amendment and consent fees or other debt issuance costs and any fees related to acquisitions (or purchases of assets) during such period, (iii) premiums or penalties paid in connection with the discharge of Indebtedness, (iv) any non-cash expense (including any recognized but unrealized losses on equity securities), (v) costs associated with Hedging Transactions and breakage costs in respect of Hedging Transactions related to interest rates, (vi) any expense resulting from the discounting of any indebtedness in connection with the application of recapitalization accounting or, if applicable, purchase accounting in connection with any acquisition (or purchase of assets), (vii) penalties and interest relating to taxes, (viii) any “additional interest” or “liquidated damages” with respect to any securities, (ix) commissions, discounts, yield and other fees and charges (excluding any cash interest expense) related to any securitization financing and (x) any accretion of accrued interest on discounted liabilities (other than Indebtedness except to the extent arising from the application of purchase accounting).

“Consolidated Leverage Ratio” means, as at the last day of any period of four consecutive fiscal quarters, the ratio of (a) Consolidated Total Debt on such day to (b) Consolidated EBITDA for such period.

“Consolidated Net Income” means, for any period, the consolidated net income (or deficit) of the Borrower and its Restricted Subsidiaries for such period (taken as a cumulative whole), determined in accordance with GAAP. In addition, to the extent not already included in Consolidated Net Income of the Borrower and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance.

“Consolidated First Lien Debt” means, at any date, the aggregate principal amount of Consolidated Total Debt as at such date that is then secured by Liens on any property or asset of the Borrower and its Restricted Subsidiaries unless such Liens are contractually subordinated to the Liens securing the Obligations.

“Consolidated Secured Debt” means, at any date, the aggregate principal amount of Consolidated Total Debt as at such date that is then secured by Liens on any property or asset of the Borrower and its Restricted Subsidiaries.

“Consolidated Secured Leverage Ratio” means, as at the last day of any period of four consecutive fiscal quarters, the ratio of (a) Consolidated Secured Debt on such day to (b) Consolidated EBITDA for such period.

“Consolidated Total Debt” means, at any date, (a) the aggregate principal amount of all Indebtedness of the Borrower and its Restricted Subsidiaries of the types described in clauses (a), (c) and (e) of the definition of Indebtedness and, without duplication, of the type described in clause (g) of the definition of Indebtedness (to the extent relating to Indebtedness of the types described in clause (a), (c) and (e) of the definition Indebtedness) at such date (net of unrestricted (other than pursuant to the Loan Documents) cash and Cash Equivalents), determined on a consolidated basis, that would be required to be shown as debt on a balance sheet of the Borrower prepared in accordance with GAAP, minus (b) to the extent that neither the Borrower nor any Restricted Subsidiary is liable therefor, the aggregate principal amount of Indebtedness of any Person (other than the Borrower or any Restricted Subsidiary) included in the amount described in clause (a) of this definition.

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

“Copyright Security Agreement” means any Copyright Security Agreement executed by a Loan Party owning registered copyrights or applications for copyrights or possessing exclusive licenses to U.S. registered copyrights in favor of the Administrative Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to the greater of (a) SOFR for the day (such day “*i*”) that is five U.S. Government Securities Business Days prior to (A) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (B) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website and (b) the Floor. If by 5:00 pm (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any day “*i*”, the SOFR in respect of such day “*i*” has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then the SOFR for such day “*i*” will be the SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Daily Simple SOFR Loan” means a Loan that bears interest at a rate based on Daily Simple SOFR.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, 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.

“Default” means any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Defaulting Lender” means, subject to Section 2.26(c), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any Issuing Bank or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lenders’ obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.26(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Bank, each Swingline Lender and each Lender.

“Deferred Consideration” has the meaning specified in Section 7.1(t).

“Disposition” means, with respect to any property, any sale, lease, sale and leaseback, assignment, conveyance, license, transfer or other similar disposition thereof, excluding any such transaction or series of related transactions that yields Net Cash Proceeds to any Group Member (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) of \$1,000,000 or less. The terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Assignee” means any Person that is a competitor of the Borrower and its Subsidiaries identified in writing on a list made available to the Administrative Agent from time to time (and any Affiliates thereof that are reasonably identifiable by name (it being understood that neither the Administrative Agent nor any Lender shall have any obligation to carry out due diligence in order to identify such Affiliates) and other than bona fide debt funds). Notwithstanding anything herein to the contrary, (x) the Administrative Agent shall be permitted to provide a copy of the list (as well as any supplements thereto) of the Disqualified Assignees to the Lenders and in no event shall a supplement to any such list apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans or Commitments that was otherwise permitted prior to such permitted supplementation, and (y) if the Borrower supplements the list of “Disqualified Assignees”, such supplement shall become effective two (2) Business Days after the date that such written supplement is delivered to the Administrative Agent (and the Administrative Agent shall promptly thereafter make available such supplement to each Lender).



“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Borrower or a Restricted Subsidiary); or

(c) is redeemable at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the date that is 91 days after the earlier of (a) the Maturity Date and (b) the last scheduled maturity date of any Incremental Facility; provided that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock.

“Dollar(s)” and the sign “\$” means lawful money of the United States.

“Dollar Equivalent” of any currency at any date shall mean (a) if such currency is Dollars, the amount of such currency, or (b) if such currency is an Alternative Currency, the equivalent in such currency of Dollars, calculated on the basis of the Exchange Rate for such currency on or as of the most recent Computation Date.

“Domestic Subsidiary” means any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States.

“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.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.4 (subject to such consents, if any, as may be required under Section 10.4(b)(iii)).

“Eligible Currency” means any lawful currency other than Dollars that is readily available, freely transferable and convertible into Dollars in the international interbank market available to the applicable Issuing Bank in such market and as to which a Dollar Equivalent may be readily calculated. If, after the designation by the applicable Issuing Bank of any currency as an Alternative Currency, any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions are imposed in the country in which such currency is issued, results in, in the reasonable opinion of the applicable Issuing Bank, (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (b) a Dollar Equivalent no longer being readily calculable with respect to such currency, (c) providing such currency is no longer practicable for the applicable Issuing Bank in its reasonable business judgment or (d) such currency no longer being a currency in which the applicable Issuing Bank is willing to issue or extend Letters of Credit in its reasonable business judgment (each of (a), (b), (c), and (d) a “Disqualifying Event”), then the applicable Issuing Bank shall promptly notify the Administrative Agent, the Lenders and the Borrower

thereof, and such country's currency shall no longer be an Alternative Currency until such time as the Disqualifying Event(s) no longer exist.

“Engagement Letter” means that certain Engagement Letter, dated as of August 6, 2020, executed by Barclays Bank PLC and accepted by the Borrower.

“Environmental Laws” means any and all applicable foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, legally binding requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health (to the extent relating to exposure to harmful or deleterious substances) or the environment.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (i) any actual or alleged violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment, disposal, release, or threatened release of any Materials of Environmental Concern, (iii) any actual or alleged exposure to any Materials of Environmental Concern, or (iv) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“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, together with any Loan Party, is treated as a single employer under Section 414 of the Code or Title IV of ERISA.

“ERISA Event” means (a) any Reportable Event; (b) the existence with respect to any Plan of a non-exempt Prohibited Transaction; (c) any failure by any Single Employer Plan to satisfy the minimum funding standards (for purposes of Sections 412 or 430 of the Code or Section 302 of ERISA) applicable to such Single Employer Plan, whether or not waived; (d) a determination that any Single Employer Plan is in “at risk” status (within the meaning of Section 430 of the Code or Title IV of ERISA); (e) the institution by the PBGC of any proceeding to terminate a Plan or the incurrence by any Loan Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Single Employer Plan, including but not limited to the imposition of any Lien in favor of the PBGC or any Single Employer Plan; (f) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by any Loan Party or any of its ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, or in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 or Title IV of ERISA).

“Escrow Funding Arrangement” means any escrow arrangement relating to Indebtedness permitted to be incurred under this Agreement pursuant to which the Net Cash Proceeds of such Indebtedness are subject to customary escrow arrangements as reasonably determined by the Borrower pursuant to which, among other things, (a) the providers of such Indebtedness (or an agent or trustee on their behalf) (the “Escrow Indebtedness Providers”) may, but are not required to, have “control” within the meaning of the UCC with respect to such escrowed Net Cash Proceeds and (b) such Escrow Indebtedness Providers agree that in the event that specified conditions subsequent are not satisfied by a date certain, such escrowed Net Cash Proceeds shall be promptly applied to the repayment of such Indebtedness.

“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 set forth in Section 8.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended and in effect from time to time.

“Exchange Rate” shall mean, on any day, with respect to any Alternative Currency, the rate at which such Alternative Currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m. (London time) on such date on the Reuters World Currency Page for such Alternative Currency. In the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate with respect to such Alternative Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be selected by the Administrative Agent or, in the event no such service is selected, such Exchange Rate shall instead be calculated on the basis of the arithmetical average of the spot rates of exchange of the Administrative Agent for such Alternative Currency on the London market at 11:00 a.m. (London time) on such date for the purchase of Dollars with such Alternative Currency, for delivery two (2) Business Days later; provided, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

“Excluded Property” means (a) property owned by any Excluded Subsidiary, Foreign Subsidiary or U.S. Pass Through Foreign Holdco; (b) any property to the extent that a grant of a security interest in such property pursuant to the Security Documents is prohibited by any Requirement of Law of a Governmental Authority, requires a consent not obtained of any Governmental Authority pursuant to such Requirement of Law or is prohibited by, or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property or, in the case of any Investment Property, Pledged Stock or Pledged Note (as such terms are defined in the Guarantee and Collateral Agreement), any applicable shareholder or similar agreement unless the only parties thereto are Group Members, except to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law; (c) Vehicles (as defined in the Guarantee and Collateral Agreement) and title documents therefor; (d) any Capital Stock held by a Loan Party in (i) a joint venture, (ii) any direct holding company of one or more joint ventures; provided that such holding company does not engage in any business or own any assets other than owning the Capital Stock of joint ventures and (iii) any Excluded Subsidiary (other than U.S. Pass Through Foreign Holdcos which shall be governed by clause (g) in this definition of “Excluded Property”); (e) [reserved]; (f) interests in real property leased, subleased or licensed to any of the Loan Parties; (g) 35% of the total outstanding voting Capital Stock of each new and existing Foreign Subsidiary and of each new and existing U.S. Pass Through Foreign Holdco; (h) any accounts (including all funds or assets held therein or security entitlements or other rights in respect of such account or the funds and/or assets held therein) subject to an Escrow Funding Arrangement; (i) any intent-to-use trademark applications to the extent and for so long as creation of a security interest therein would result in the loss by the pledgor thereof of any material rights therein or impair the validity thereof; (j) all Deposit Accounts (as defined in the UCC) that are used for solely and exclusively for the purpose of funding payroll, employee benefit, tax withholding or other fiduciary obligations to employees pursuant to applicable Requirements of Law or in the ordinary course of business; and (k) property owned on the Closing Date or thereafter acquired that is subject to a Lien permitted under Section 7.2(g) or securing a Capital Lease Obligation if the contract or other agreement in which such Lien is granted (or the documentation providing for such purchase money interest or Capital Lease Obligation) validly prohibits the creation of any other Lien on such property.

“Excluded Subsidiary” means (a) each direct or indirect Domestic Subsidiary of a Foreign Subsidiary, (b) each U.S. Pass Through Foreign Holdco, (c) each Unrestricted Subsidiary, (d) each Immaterial Subsidiary, and (e) each Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor.

“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 Obligation of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee Obligation thereof) is or becomes illegal 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 Obligation of such Guarantor becomes effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee Obligation or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.25) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.20(g) and (d) any withholding Taxes imposed under FATCA.

"Existing Convertible Notes" means the \$575,000,000, 0.125% Convertible Senior Notes Due 2023 issued by Pure Storage, Inc.

"Existing Convertible Notes Indenture" means the indenture for the Existing Convertible Notes, dated as of April 9, 2018, between the Borrower and U.S. Bank National Association, as trustee.

"Extension Agreement" has the meaning specified in Section 2.27(b).

"Extension Offer" has the meaning specified in Section 2.27(a).

"Extension Permitted Amendment" means the terms of an amendment to this Agreement and the other Loan Documents, effected pursuant to an Extension Agreement in connection with an Extension Offer pursuant to Section 2.27, providing for an extension of the Maturity Date applicable to the Accepting Lenders' Loans and/or scheduled maturity dates and/or commitments and/or Loans of the applicable Extension Request Facility (such Loans or commitments being referred to as the "Extended Loans" or "Extended Commitments", as applicable) and, in connection therewith, as applicable (a) an increase or decrease in the rate of interest (including through fixed interest rates and changes to the interest rate margins or rate floors) accruing on such Extended Loans, (b) in the case of Extended Loans that are Term Loans of any Facility, a modification of the scheduled amortization applicable thereto; provided that the weighted average life to maturity of such Extended Loans shall be no shorter than the remaining weighted average life to maturity (determined at the time of such Extension Offer) of the Term Loans of such Facility, (c) a modification of voluntary or mandatory prepayments applicable thereto; provided that in the case of Extended Loans that are Term Loans, such requirements may provide (i) that such Extended Loans may participate in any mandatory prepayments on a pro rata basis (or on a basis that is less than a pro rata basis) with the Loans of the applicable Extension Request Facility and any other outstanding facilities, but may not provide for mandatory prepayment requirements that are more favorable to the Extended Loans than those applicable to the Loans of the applicable Extension Request Facility and (ii) that voluntary prepayments may be allocated as directed by the Borrower among the outstanding facilities, (d) an increase or decrease in the fees payable to, or the inclusion of new fees or premiums to be payable to, the Accepting Lenders in respect of such Extension Offer or their Extended Loans or Extended Commitments and/or (e) an addition of any affirmative or negative covenants or other terms, provided that any such additional covenant or terms with which the Borrower and its Subsidiaries shall be required to comply prior to the latest scheduled maturity date of any Facility in effect immediately prior to such Extension Permitted Amendment for the benefit of the Accepting Lenders providing such Extended Loans or Extended Commitments shall also be for the benefit of all other Lenders.

“Extension Request Facility” has the meaning defined in Section 2.27(a).

“Facility” means (a) the Revolving Facility, (b) any Incremental Facility and (c) any other credit facility made available to the Borrower pursuant to this Agreement (including, without limitation, any Replacement Facilities).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate 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 Effective Rate for any day is less than zero, the Federal Funds Effective Rate for such day will be deemed to be zero.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States.

“Fee Letter” means any fee letter or fee letters dated on or about the date of this Agreement between any Arranger and/or the Administrative Agent and the Borrower setting forth certain fees payable to the applicable Arranger, the Administrative Agent and/or the Lenders.

“First Lien Leverage Ratio” means, as at the last day of any period of four consecutive fiscal quarters, the ratio of (a) Consolidated First Lien Debt on such day to (b) Consolidated EBITDA for such period.

“Fixed Incremental Amount” means, as of any date of determination, the excess, if any, of (a) the greater of \$80,000,000 and 50% of Consolidated EBITDA as determined as of the last day of the most recent four quarter period for which financial statements have been delivered hereunder minus (b) the aggregate principal amount of all Indebtedness issued or established prior to such time in reliance on the Fixed Incremental Amount.

“Floor” means a rate of interest equal to zero.

“Foreign Lender” means a Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Subsidiary of the Borrower that is not a Domestic Subsidiary (including, for the avoidance of doubt, any Subsidiary of the Borrower that is a controlled foreign corporation under Section 957 of the Code).

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

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

“Group Members” means the collective reference to the Borrower and its Restricted Subsidiaries.

“Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement, dated as of the date hereof and substantially in the form of Exhibit C, made by the Loan Parties in favor of the Administrative Agent for the benefit of the Secured Parties.

“Guarantee Obligation” means, as to any Person (the “guaranteeing person”), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing Person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness or dividend (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor so as to ensure such primary obligor to pay such primary obligation, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (A) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (B) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Guarantor” means each Domestic Subsidiary of the Borrower that is a party to the Guarantee and Collateral Agreement other than (a) Excluded Subsidiaries and (b) joint ventures.

“Hedging Obligations” of any Person shall mean any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedging Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (iii) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions; provided that Hedging Obligations shall exclude any obligations of such Persons in respect of any Permitted Call Spread Transaction.

“Hedging Transaction” of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, 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.

“Honor Date” has the meaning specified in Section 2.22(d).

“Immaterial Subsidiary” means any Restricted Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been (or

were required to be) delivered pursuant to Section 5.1(a) or Section 5.1(b), have assets with a value in excess of 5.0% of the Consolidated Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis as of such date, and (b) taken together with all Immaterial Subsidiaries as of such date, did not have assets with a value in excess of 10% of Consolidated Assets or revenues representing in excess of 10% of total revenues of the Borrower and the Subsidiaries on a consolidated basis as of such date; provided that if the Consolidated Assets or revenues of any or all Immaterial Subsidiaries shall at any time exceed the limits set forth above, then the Borrower shall cause one or more Immaterial Subsidiaries to become a Guarantor in accordance with Section 5.9(c) so that such limits are not exceeded; provided that in no event shall any Foreign Subsidiary or any U.S. Pass Through Foreign Holdco be required to become a Guarantor as a result thereof. Each Immaterial Subsidiary as of the Closing Date shall be set forth on Schedule 1.1(b).

“Incremental Amendment” has the meaning specified in Section 2.23(b).

“Incremental Facility” has the meaning specified in Section 2.23(a).

“Incremental Facility Closing Date” has the meaning specified in Section 2.23(b).

“Incremental Revolving Facility” has the meaning specified in Section 2.23(a).

“Incremental Term Facility” has the meaning specified in Section 2.23(a).

“Indebtedness” means, of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, which would, in accordance with GAAP be shown on the liability side of the balance sheet, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (f) above, (h) all obligations of the kind referred to in clauses (a) through (g) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; provided, if such Person has not assumed or become liable for such obligation, the amount of such Indebtedness shall be deemed to be the lesser of the fair market value of such property or the obligation being secured thereby, and (i) for the purposes of Section 8.1(e) only, all obligations of such Person in respect of Swap Agreements (provided the amount of such obligations shall be deemed to be the Net Mark-to-Market Exposure with respect thereto and shall exclude any obligations settleable at the option of such Person in Qualified Stock), but excluding (i) trade and other accounts payables incurred in the ordinary course of such Person’s business, (ii) accrued expenses and deferred compensation arrangements in the ordinary course of such Person’s business, (iii) advance payments and deferred or prepaid revenue in the ordinary course of such Person’s business, and (iv) conditional payment obligations (including, for the avoidance of doubt, earn-outs, post-closing purchase price adjustments and other similar contingent payments). The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

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

“Insolvent” mean a condition of Insolvency.

“Intellectual Property” means, the collective reference to all rights, priorities and privileges relating to intellectual property, whether registered or unregistered, arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, mask works, inventions, designs, patents, patent licenses, trademarks, tradenames, domain names and other source indicators, trademark licenses, technology, software, trade secrets, know-how and processes, all other intellectual property or proprietary rights, all registrations and applications for registration therefor, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Interest Coverage Ratio” means, for any period, the ratio of (a) Consolidated EBITDA for such period to (b) Consolidated Interest Expense paid or payable in cash for such period.

“Interest Period” with respect to any Term SOFR Loan, the period beginning on the date of such Borrowing specified in the applicable Loan Notice and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (or such other period as all of the relevant Lenders may agree); provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day, and (ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period; *provided* that no Interest Period may extend beyond the Maturity Date.

“Investments” means an advance, loan, extension of credit (by way of guaranty or otherwise, but excluding trade debt incurred in the ordinary course of business) or capital contribution to, or purchase of any Capital Stock, bonds, notes, loans, debentures or other debt securities of, or any assets constituting a business unit of, or any other similar investment in, any Person. The amount of any Investment by any Person on any date of determination shall be the acquisition price of the gross assets acquired (including any liability assumed by such Person to the extent such liability would be reflected on a balance sheet prepared in accordance with GAAP) plus all additional capital contributions or purchase price paid in respect thereof, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment minus the amount of all cash returns of principal or capital thereon, cash dividends thereon and other cash returns on investment thereon or liabilities expressly assumed by another Person (other than a Group Member) in connection with the sale of such Investment. Whenever the term “outstanding” is used in this Agreement with reference to an Investment, it shall take into account the matters referred to in the preceding sentence.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means Barclays Bank PLC, HSBC Bank USA, N.A., and JPMorgan Chase Bank, N.A., each in its capacity as the issuer of Letters of Credit pursuant to Section 2.22, or such other Lender as the Borrower may from time to time select as an Issuing Bank hereunder pursuant to Section 2.22; provided that such Lender has agreed to be an Issuing Bank.

“Junior Indebtedness” means (a) unsecured debt securities issued by the Borrower or any Restricted Subsidiary, (b) unsecured term loans borrowed by the Borrower or any Restricted Subsidiary, (c) Indebtedness of any Restricted Subsidiary which is subordinated in right of payment to any Obligations, and (d) Indebtedness secured on a junior basis to the Liens securing the Obligations. For the avoidance of doubt, Junior Indebtedness does not include Loans.

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Loans or Commitments hereunder at such time, in each case as extended in accordance with this Agreement from time to time.



“LC Commitment” means, with respect to any Issuing Bank, the amount set forth opposite its name on Schedule II hereto.

“LC Commitment Amount” means an amount equal to \$25,000,000.

“LC Disbursement” means a payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Documents” means all applications, agreements and instruments relating to the Letters of Credit but excluding the Letters of Credit.

“LC Exposure” means, at any time, the sum of (i) the Dollar Equivalent of the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (ii) the Dollar Equivalent of the aggregate amount of all LC Disbursements that have not been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender shall be its Pro Rata Share of the total LC Exposure at such time. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, that with respect to any Letter of Credit that, by its terms or any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

“LCA Election” has the meaning set forth in Section 1.7.

“LCA Test Date” has the meaning set forth in Section 1.7.

“Left Lead Arranger” means Barclays Bank PLC, in its capacity as the left lead arranger and book runner.

“Lender-Related Hedge Provider” means any Person that, at the time it enters into a Hedging Transaction with any Loan Party, (i) is a Lender or an Affiliate of a Lender and (ii) except when the Lender-Related Hedge Provider is Barclays Bank PLC or any of its Affiliates, has provided written notice to the Administrative Agent which has been acknowledged by the Borrower of (x) the existence of such Hedging Transaction and (y) the methodology to be used by such parties in determining the obligations under such Hedging Transaction from time to time. In no event shall any Lender-Related Hedge Provider acting in such capacity be deemed a Lender for purposes hereof to the extent of and as to Hedging Obligations except that each reference to the term “Lender” in Article IX and Section 10.3(b) shall be deemed to include such Lender-Related Hedge Provider. In no event shall the approval of any such Person in its capacity as Lender-Related Hedge Provider be required in connection with the release or termination of any security interest or Lien of the Administrative Agent.

“Lenders” has the meaning set forth in the introductory paragraph hereof and shall include, where appropriate, the Swingline Lender, each Additional Lender, and each Replacement Lender.

“Letter of Credit” means any stand-by letter of credit issued pursuant to Section 2.22 by an Issuing Bank for the account of the Borrower pursuant to the LC Commitment.

“Lien” means any mortgage, pledge, security interest, license, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of any of the foregoing or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, in each case, in the nature of security (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“Limited Condition Acquisition” means any Acquisition or other permitted Investment in any assets, business or Person, in each case, the consummation of which by the Borrower or any Subsidiary is not expressly conditioned on the availability of, or on obtaining, third party financing.

“Liquidity” means the sum of (i) all unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries and (ii) the aggregate unused Commitments then available to be drawn by the Borrower under the Revolving Facility.

“Liquidity Threshold” means Liquidity in excess of \$625,000,000.

“Loan Documents” means, collectively, this Agreement, the Security Documents, the LC Documents, the Engagement Letter, any promissory notes issued hereunder, any and all other instruments, agreements, documents and writings executed in connection with any of the foregoing which the Borrower and the Administrative Agent agree in writing is a “Loan Document”, and any amendment, amendment and restatement, waiver, supplement or other modification to any of the foregoing.

“Loan Parties” means the Borrower and the Guarantors.

“Loans” means all Revolving Loans and Swingline Loans in the aggregate or any of them, as the context shall require, and shall include, where appropriate, any loan made pursuant to Section 2.23.

“Market Intercreditor Agreement” means an intercreditor agreement the terms of which are consistent with market terms governing security arrangements for the sharing of liens or arrangements relating to the distribution of payments, as applicable, at the time the intercreditor agreement is proposed to be established in light of the type of Indebtedness subject thereto.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, property or financial condition of the Borrower and its restricted subsidiaries, taken as a whole or (b) the validity or enforceability of the Loan Documents or the material rights or remedies of the Administrative Agent or the Lenders thereunder; provided, however, with respect to clause (a) of this definition, during the period from the Closing Date to one (1) year after the Closing Date, a Material Adverse Effect shall not be deemed to exist solely as a result of impacts of the coronavirus disease known as COVID-19, which have occurred and been disclosed (including any such disclosures in the Borrower’s SEC filings) to the Lenders at least 5 business days prior to the Closing Date.

“Material Transaction” means (a) any Acquisition or other Investment that results in a Person becoming a Restricted Subsidiary, (b) any Disposition (x) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower or (y) of a business, business unit, line of business or division of the Borrower or a Restricted Subsidiary, or (c) any operational change, including any restructuring or costs savings initiative, consummated or undertaken by the Borrower or a Restricted Subsidiary.

“Materials of Environmental Concern” means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including asbestos, polychlorinated biphenyls, per- and polyfluoroalkyl substances and urea-formaldehyde insulation.

“Maturity Date” means the earliest of (i) August 24, 2025, (ii) the date on which the Aggregate Revolving Commitments are terminated pursuant to Section 2.8, (iii) the date on which all amounts outstanding under this Agreement have been declared or have automatically become due and payable (whether by acceleration or otherwise) and (iv) the date that is 91 days prior to the stated maturity of the Existing Convertible Notes, unless on such date and each subsequent day until the Existing Convertible Notes are paid in full the Borrower is in compliance with the Liquidity Threshold.

“Maximum Rate” has the meaning specified in Section 10.12.

“Modified Leverage Period” has the meaning specified in Section 6.1.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgages” means, collectively, each mortgage, deed of trust, trust deed, security deed, debenture, deed of immovable hypothec, deed to secure debt or other real estate security documents

delivered by any Loan Party to the Administrative Agent from time to time, all in form and substance satisfactory to the Administrative Agent.

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

“Net Cash Proceeds” means, (a) in connection with any Disposition, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of (i) attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Disposition (other than any Lien created pursuant to a Security Document or securing Junior Indebtedness) and other third-party fees and expenses actually incurred in connection therewith and (ii) Taxes paid or reasonably estimated to be payable as a result of such Disposition (after taking into account any available tax credits or deductions and any tax sharing arrangements) and (b) in connection with any issuance or sale of Capital Stock or any incurrence of Indebtedness, the cash proceeds received from such issuance or incurrence, net of attorneys’ fees, investment banking fees, accountants’ fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith and, in the case of any Indebtedness that constitutes Permitted Convertible Indebtedness, the net cost of any Permitted Call Spread Transaction executed substantially concurrently with the pricing of such Permitted Convertible Indebtedness.

“Net Mark-to-Market Exposure” of any Person shall mean, as of any date of determination with respect to any Hedging Obligation, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from such Hedging Obligation. “Unrealized losses” shall mean the fair market value of the cost to such Person of replacing the Hedging Transaction giving rise to such Hedging Obligation as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date), and “unrealized profits” shall mean the fair market value of the gain to such Person of replacing such Hedging Transaction as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all or all affected Lenders in accordance with the terms of Section 2.25 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, a Lender that is not a Defaulting Lender.

“Notice of Borrowing” means a Notice of Revolving Borrowing or a Notice of Swingline Borrowing, as context may require.

“Notice of Conversion/Continuation” has the meaning set forth in Section 2.7(b).

“Notice of Revolving Borrowing” has the meaning set forth in Section 2.3.

“Notice of Swingline Borrowing” has the meaning set forth in Section 2.4.

“Obligations” means (a) all amounts owing by the Loan Parties to the Administrative Agent, an Issuing Bank, any Lender (including the Swingline Lender) or the Arrangers pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Commitment, Loan or Letter of Credit including, without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Administrative Agent, any Issuing Bank and any Lender (including the Swingline Lender) incurred pursuant to this Agreement or any other Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, (b) all Hedging Obligations owed by any Loan Party to any Lender-Related Hedge Provider, and (c) all Bank

Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing; provided, however, that with respect to any Guarantor, the Obligations shall not include any Excluded Swap Obligations.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.25).

“Overnight Foreign Currency Rate” shall mean, for any amount payable in an Alternative Currency, the rate of interest per annum as determined by the Administrative Agent at which overnight or weekend deposits in such Alternative Currency (or if such amount due remains unpaid for more than three (3) Business Days, then for such other period of time as the Administrative Agent may elect) for delivery in immediately available and freely transferable funds would be offered by the Administrative Agent to major banks in the interbank market upon request of such major banks for such Alternative Currency as determined above and in an amount comparable to the applicable unpaid amount, plus any taxes, levies, imposts, duties, deductions, charges or withholdings imposed upon, or charged to, the Administrative Agent by any relevant correspondent bank in respect of such amount in such Alternative Currency; provided that, if the Overnight Foreign Currency Rate is less than zero, such rate shall be deemed to be zero for all purposes of this Agreement.

“Parent Company” means, with respect to a Lender, the “bank holding company” as defined in Regulation Y, if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

“Participant” has the meaning set forth in Section 10.4(d).

“Participant Register” has the meaning set forth in Section 10.4(d).

“Patent Security Agreement” means any Patent Security Agreement executed by a Loan Party owning patents or licenses of patents in favor of the Administrative Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended and in effect from time to time, and the rules and regulations promulgated or issued hereunder.

“Payment Office” means the office of the Administrative Agent located at 303 Peachtree Street, N.E., Atlanta, Georgia 30308, or such other location as to which the Administrative Agent shall have given written notice to the Borrower and the Lenders.

“PBGC” means the U.S. Pension Benefit Guaranty Corporation referred to and defined in ERISA, and any successor entity performing similar functions.

“Permitted Acquisition” means any Acquisition by (i) the Borrower or any of its Subsidiaries of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person or (ii) the Borrower or any of its Subsidiaries of no less than 100% of the capital stock, partnership interests, membership interests or equity of any Person (not owned directly or indirectly

by the Borrower immediately prior to giving effect to such Acquisition) in one transaction or in a related series of transactions, in each case, to the extent that:

(a) each of the following conditions precedent shall have been satisfied:

(i) the Borrower shall comply, and shall cause the Target to the extent applicable to comply, with the provisions of Section 5.9 of this Agreement; and

(ii) immediately after giving effect to such Acquisition and the incurrence of any Indebtedness in connection therewith, (A) no Event of Default shall then exist or would exist immediately after giving effect thereto, and (B) the Borrower shall be in compliance on a pro forma basis, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt, with the covenants set forth in Article VI recomputed for the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered hereunder and for which information is available regarding the business being acquired; provided, however, solely with respect to a Limited Condition Acquisition, compliance with this clause (ii) shall be subject to Section 1.7;

(b) such Acquisition shall not be hostile and shall have been approved by the board of directors (or other similar body) and/or the stockholders or other equityholders of the Target or the parent thereof; and

(c) any Person or assets, business or division acquired in accordance herewith shall be in the same business or lines of business (i) in which the Borrower and/or its Subsidiaries are then engaged or that are identified in the Borrower's Form 10-K filed with the SEC prior to the date hereof or (ii) that are reasonably related, incidental, ancillary, complementary (including related, complementary, synergistic or ancillary technologies) or similar thereto, or a reasonable extension, development or expansion thereof.

"Permitted Bond Hedge Transaction" means any bond hedge, capped call or similar option transaction entered into in connection with the issuance of Permitted Convertible Indebtedness for the purpose or having the effect of increasing the effective conversion price of such Permitted Convertible Indebtedness or reducing the potential dilution and/or offset any cash payments upon the conversion or exchange of any Permitted Convertible Indebtedness.

"Permitted Call Spread Transaction" means any Permitted Bond Hedge Transaction together with, if applicable, any Permitted Warrant Transaction.

"Permitted Convertible Indebtedness" means any notes, bonds, debentures or similar instruments issued by the Borrower that are convertible into or exchangeable for (x) cash, (y) shares of the Borrower's common stock or preferred stock or other equity securities that constitute Qualified Stock and/or (z) a combination thereof.

"Permitted Refinancing Indebtedness" has the meaning given to such term in Section 7.1(n).

"Permitted Warrant Transaction" means any warrant issued by the Borrower concurrently with the purchase, by the Borrower, of a Permitted Bond Hedge Transaction for the purpose of offsetting the cost of such Permitted Bond Hedge Transaction.

"Person" means any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means, at a particular time, any employee pension benefit plan (as defined in Section 3(2) of ERISA) in respect of which a Loan Party or any ERISA Affiliate is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

“Platform” means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent).

“Pro Rata Share” means with respect to any Class of Commitment or Loan of any Lender at any time, a percentage, the numerator of which shall be such Lender’s Commitment of such Class (or if such Commitment has been terminated or expired or the Loans have been declared to be due and payable, such Lender’s Revolving Credit Exposure), and the denominator of which shall be the sum of all Commitments of such Class of all Lenders (or if such Commitments have been terminated or expired or the Loans have been declared to be due and payable, all Revolving Credit Exposure of all Lenders).

“Prohibited Transaction” has the meaning specified in Section 406 of ERISA or Section 4975 of the Code.

“Properties” has the meaning specified in Section 4.16.

“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.

“Qualified Stock” means, with respect to any Person, Capital Stock of such Person which is not Disqualified Stock.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank.

“Recovery Event” means any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Group Member.

“Refinanced Facility” has the meaning specified Section 10.2(b).

“Refinanced Revolving Facility” has the meaning specified Section 10.2(b).

“Refinanced Term Loans” has the meaning specified Section 10.2(b).

“Register” has the meaning specified in Section 10.4(c).

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

“Regulation Y” means Regulation Y of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the managers, administrators, trustees, partners, directors, officers, employees, agents, advisors or other representatives of such Person and such Person’s Affiliates.

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

“Replacement Facility” has the meaning specified in Section 10.2(b).

“Replacement Lender” has the meaning specified in Section 2.25.

“Replacement Revolving Facility” has the meaning specified in Section 10.2(b).

“Replacement Term Loans” has the meaning specified in Section 10.2(b).

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than those events as to which the thirty day notice period is waived under PBGC regulations.

“Required Facility Lenders” means, at any time with respect to any Facility, Lenders holding more than 50% of the aggregate outstanding Commitments, or if the Lenders have no Commitments under such Facility outstanding, Lenders holding more than 50% of the aggregate outstanding Loans and Revolving Credit Exposure (if applicable) under such Facility at such time; provided that to the extent any Lender under such Facility is a Defaulting Lender, such Defaulting Lender and all of its Commitments, Loans and Revolving Credit Exposure (if applicable) shall be excluded for purposes of determining Required Facility Lenders

“Required Lenders” means, at any time, Lenders holding more than 50% of the aggregate outstanding Revolving Commitments at such time or, if the Lenders have no Commitments outstanding, then Lenders holding more than 50% of the aggregate outstanding Revolving Credit Exposure at such time; provided that to the extent that any Lender is a Defaulting Lender, such Defaulting Lender and all of its Revolving Commitments and Revolving Credit Exposure shall be excluded for purposes of determining Required Lenders.

“Requirement of Law” for any Person shall mean any law, treaty, rule or regulation, or determination of a Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

“Responsible Officer” shall mean (x) with respect to certifying compliance with the financial covenants set forth in Article VI, the chief financial officer, corporate controller or the treasurer of the Borrower and (y) with respect to all other provisions, any of the chief executive officer, the president, the chief financial officer, the corporate controller, any vice president, general counsel, secretary, the treasurer or the assistant treasurer of the applicable Loan Party.

“Restricted Payment” has the meaning specified in Section 7.5.

“Restricted Subsidiary” means any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

“Revolving Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans to the Borrower and to acquire participations in Letters of Credit and Swingline Loans in an aggregate principal amount not exceeding the amount set forth with respect to such Lender on Schedule II, as such schedule may be amended pursuant to Section 2.23, or, in the case of a Person becoming a Lender after the Closing Date, the amount of the assigned “Revolving Commitment” as provided in the Assignment and Acceptance executed by such Person as an assignee, or the joinder executed by such Person, in each case as such commitment may subsequently be increased or decreased pursuant to the terms hereof.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans, LC Exposure and Swingline Exposure.

“Revolving Facility” means the revolving credit facility made available to the Borrower pursuant to this Agreement.

“Revolving Loan” means a loan made by a Lender (other than the Swingline Lender) to the Borrower under its Revolving Commitment, which may either be a Base Rate Loan or a Term SOFR Loan.

“S&P” means Standard & Poor’s, a Standard & Poor’s Financial Services LLC business.

“Sanctioned Country” means, at any time, a country, region or territory that is, or whose government is, the subject or target of any Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea and Syria.

“Sanctioned Person” means, at any time, (a) any Person that is the subject or target of any Sanctions, (b) any Person located, organized, operating or resident in a Sanctioned Country or (c) any Person owned or controlled by, or acting on behalf of, any such Person.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom, or (c) any other relevant sanctions authority of a jurisdiction in which the Borrower, any Subsidiary, or any Lender conduct their businesses and to which any such Person are lawfully subject.

“Secured Parties” means the Administrative Agent, the Lenders, the Issuing Banks, the Lender-Related Hedge Providers and the Bank Product Providers.

“Security Documents” means the collective reference to the Guarantee and Collateral Agreement, all Copyright Security Agreements, all Patent Security Agreements, all Trademark Security Agreements, the Mortgages, all UCC financing statements, fixture filings and stock powers, and all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

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

“SOFR” means, with respect to any U.S. Government Securities Business Day, a rate per annum equal to the secured overnight financing rate for such U.S. Government Securities Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding U.S. Government Securities Business Day.

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

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Loan” means a Loan that bears interest at a rate based on Daily Simple SOFR or Term SOFR, other than, in each case, pursuant to clause (c) of the definition of “Base Rate”.

“SOFR Rate Day” has the meaning assigned to such term in the definition of “Daily Simple SOFR”.

“Solvent” means, as to any Person as of any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, and (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The



amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Special Flood Hazard Area” means an area identified by the Federal Emergency Management as a special flood hazard area.

“Subsidiary” means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person (exclusive of any Affiliate in which such Person has a minority ownership interest). Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower or its successors.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any Swap Agreement.

“Swingline Commitment” means the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding not to exceed \$25,000,000.

“Swingline Exposure” means, with respect to each Lender, the principal amount of the Swingline Loans in which such Lender is legally obligated either to make a Base Rate Loan or to purchase a participation in accordance with Section 2.4, which shall equal such Lender’s Pro Rata Share of all outstanding Swingline Loans.

“Swingline Lender” means Barclays Bank PLC.

“Swingline Loan” means a loan made to the Borrower by the Swingline Lender under the Swingline Commitment.

“Target” means the Person, or business or substantially all of the assets of a Person or a division of a Person, intended to be acquired in a Permitted Acquisition.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, or charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loans” means any term loans made pursuant to this Agreement.

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to Term SOFR.

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR

Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion and in consultation with the Borrower).

“Term SOFR Loan” means a Loan that bears interest at a rate based on Term SOFR.

“Term SOFR Reference Rate” means the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR.

“Termination Date” means the date on which (a) all Commitments shall have been terminated, (b) all Obligations (other than (x) in respect of contingent indemnification and contingent expense reimbursement claims not then due and as to which no claim has been asserted or notice given, (y) Bank Product Obligations and (z) Hedging Obligations) have been paid in full and (c) all Letters of Credit (other than those that have been 105% Cash Collateralized or for which the issuance of a “back-to-back” letter of credit in form and substance acceptable to the applicable Issuing Bank) have been cancelled or have expired (without any drawing having been made thereunder that has not been rejected or honored) and all amounts drawn or paid thereunder have been reimbursed in full.

“Trademark Security Agreement” means any Trademark Security Agreement executed by a Loan Party owning registered trademarks or applications for trademarks in favor of the Administrative Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

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

“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 falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

“United States” or “U.S.” means the United States of America.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Unrestricted Subsidiary” means any Subsidiary of the Borrower that is designated by the Borrower as an Unrestricted Subsidiary on or after the Closing Date pursuant to Section 5.10. Each Unrestricted Subsidiary as of the Closing Date shall be set forth on Schedule 1.1(c).

“U.S. Pass Through Foreign Holdco” means any Domestic Subsidiary substantially all of the assets of which consist of Capital Stock of one or more Foreign Subsidiaries that are controlled foreign corporations within the meaning of Section 957(a) of the Code and/or other U.S. Pass Through Foreign Holdcos.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 2.20(g)(ii)(B)(iii).

“Withdrawal Liability” means liability to 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.

“Withholding Agent” means the Borrower, any other Loan Party or the Administrative Agent, as applicable.

“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 1.2 **Classifications of Loans and Borrowings**. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., “Revolving Loan” or “Swingline Loan”) or by Type (e.g., “Term SOFR Loan” or “Base Rate Loan”) or by Class and Type (e.g., “Revolving Term SOFR Loan”). Borrowings also may be classified and referred to by Class (e.g., “Revolving Borrowing”) or by Type (e.g., “Term SOFR Borrowing”) or by Class and Type (e.g., “Revolving Term SOFR Borrowing”).

Section 1.3 **Accounting Terms and Determination.**

(a) Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP 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 date hereof 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 on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn by the Borrower or the Administrative Agent (or the Required Lenders), as the case may be, or such provision amended in accordance herewith.

(b) When determining whether a Default or Event of Default pursuant to Section 8.1 shall be in existence after giving pro forma effect to a certain event, the covenant levels to be used in making such determination shall be those in effect as of the last day of the most recent fiscal quarter of the Borrower for which financial reports are required to have been delivered pursuant to Section 5.1.

(c) Notwithstanding any other provision contained herein, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Accounting Standards Codification Section 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary of any Loan Party at “fair value”, as defined therein or the effect of Accounting Standards Codification 470-20 (or any other Financial Accounting Standard having a similar result or effect) to separately account for the liability and debt components of any convertible or exchangeable Indebtedness that may be settled entirely or partially in cash upon conversion, and (b) for all purposes of this Agreement and the other Loan Documents, including negative covenants, financial covenants and component definitions, GAAP will be deemed to treat operating leases and Capitalized Leases in a manner consistent with the treatment under GAAP as in effect prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of Accounting Standards Update No. 2016-02. In addition, in the case of any Permitted Convertible Indebtedness for which the embedded conversion obligation must be settled by paying solely cash, so long as substantially concurrently with the offering of such Permitted Convertible Indebtedness, the Borrower enters into a cash-settled Permitted Bond Hedge Transaction relating to such Permitted Convertible Indebtedness, notwithstanding any other provision contained herein, for so long as such Permitted Bond Hedge Transaction (or a portion thereof corresponding to the amount of outstanding Permitted Convertible Indebtedness) remains in effect in an amount sufficient to fully satisfy such conversion obligation in cash, all computations of amounts and ratios referred to herein shall be made as if the amount of Indebtedness represented by such Permitted Convertible Indebtedness were equal to the face principal amount thereof without regard to any mark-to-market derivative accounting for such Indebtedness.

Section 1.4 **Terms Generally.** The definitions of terms herein and in the other Loan Documents shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the word “to” means “to but excluding”. Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein or in any other Loan Document shall be construed as referring to such agreement, instrument or other document as it was originally executed or as it may from time to time be amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein or in any other Loan Document to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) the words “hereof”, “herein” and “hereunder” and words of similar import shall be construed to refer to this

Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement, (v) all references to a specific time shall be construed to refer to the time in the city and state of the Administrative Agent's principal office, unless otherwise indicated and (vi) any definition of or reference to any law shall include all statutory and regulatory provisions consolidating, amending, or interpreting any such law and any reference to or definition of any law or regulation, unless otherwise specified, shall refer to such law or regulation as amended, modified or supplemented from time to time.

Section 1.5 **Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

Section 1.6 **Rates.** The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Base Rate, any Term Benchmark, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, any Term Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Base Rate, any Term Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion, after consultation with the Borrower, to ascertain Base Rate, any Term Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.7 **Limited Condition Acquisitions.** Notwithstanding anything to the contrary herein, (i) when calculating any financial ratio or test (including any First Lien Leverage Ratio test, any Consolidated Secured Leverage Ratio test, any Consolidated Leverage Ratio test and the amount of Consolidated Assets or the amount of Consolidated Net Income or Consolidated EBITDA) in connection with the incurrence of Indebtedness, the creation of Liens or the making of an Investment, (ii) determining compliance with any provision of this Agreement which requires that no Default or Event of Default (or any type of Default or Event of Default) has occurred, is continuing or would result therefrom, (iii) determining compliance with any provision of this Agreement which requires compliance with any representation or warranties set forth herein or (iv) determining the satisfaction of all other conditions precedent to the incurrence of Indebtedness, the creation of Liens or the making of an Investment, in each case with respect to clauses (i)-(iv) in connection with a Limited Condition Acquisition, the date of determination of such ratio or other provisions, determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom, determination of compliance with any representations or warranties or the satisfaction of any other conditions shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "LCA Election," which LCA Election may be in respect of all or none of (i), (ii), (iii) or (iv)), be deemed to be the date the definitive agreements (or other relevant definitive documentation) for such Limited Condition Acquisition are entered into (the "LCA Test Date"). If on a pro forma basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence or issuance of Indebtedness, and the use of proceeds thereof), with such ratios and other provisions calculated as if such Limited Condition Acquisition or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date for which financial statements have been (or are required to be) delivered pursuant to Section 5.1, the Borrower could have taken such action on the relevant LCA Test Date in compliance with the

applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless an Event of Default pursuant to Section 8.1(a) or (f) shall be continuing on the date such Limited Condition Acquisition is consummated. For the avoidance of doubt, (i) if, following the LCA Test Date, any of such ratios or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA or other components of such ratio) or other provisions at or prior to the consummation of the relevant Limited Condition Acquisitions, such ratios and other provisions will not be deemed to have been exceeded or failed to have been satisfied as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Acquisition. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio, basket availability or compliance with any other provision hereunder (other than actual compliance with the financial covenants set forth in Article VI) on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated and the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio, basket or compliance with any other provision hereunder shall be calculated on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence or issuance of Indebtedness and the use of proceeds thereof) had been consummated on the LCA Test Date.

## Article II.

### AMOUNT AND TERMS OF THE COMMITMENTS

Section 2.1 **General Description of Facilities.** Subject to and upon the terms and conditions herein set forth, (i) the Lenders hereby establish in favor of the Borrower a revolving credit facility pursuant to which each Lender severally agrees (to the extent of such Lender's Revolving Commitment) to make Revolving Loans to the Borrower in accordance with Section 2.2; (ii) each Issuing Bank agrees to issue Letters of Credit in accordance with Section 2.22; (iii) the Swingline Lender may make Swingline Loans in accordance with Section 2.4; and (iv) each Lender agrees to purchase a participation interest in the Letters of Credit and the Swingline Loans pursuant to the terms and conditions hereof; provided that in no event shall the aggregate principal amount of all outstanding Revolving Loans, Swingline Loans and outstanding LC Exposure exceed the Aggregate Revolving Commitment Amount in effect from time to time.

Section 2.2 **Revolving Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make Revolving Loans, ratably in proportion to its Pro Rata Share of the Aggregate Revolving Commitments, to the Borrower, from time to time during the Availability Period, in Dollars in an aggregate principal amount outstanding at any time that will not result in (a) the Dollar Equivalent of such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Commitment or (b) the Dollar Equivalent of the aggregate Revolving Credit Exposures of all Lenders exceeding the Aggregate Revolving Commitment Amount. During the Availability Period, the Borrower shall be entitled to borrow, prepay and reborrow Revolving Loans in accordance with the terms and conditions of this Agreement; provided that the Borrower may not borrow or reborrow should there exist a Default or Event of Default.

Section 2.3 **Procedure for Revolving Borrowings.** The Borrower shall give the Administrative Agent written notice of each Revolving Borrowing, substantially in the form of Exhibit D attached hereto (a "Notice of Revolving Borrowing"), (x) prior to 11:00 a.m. New York City time on the requested date of each Base Rate Borrowing and (y) prior to 1:00 p.m. New York City time three (3) Business Days prior to the requested date of each Term SOFR Borrowing. Each Notice of Revolving Borrowing shall be irrevocable and shall specify (i) the aggregate principal amount of such Borrowing, (ii) the date of such Borrowing (which shall be a Business Day), (iii) the Type of such Revolving Loan comprising such Borrowing and (iv) in the case of a Term SOFR Borrowing, the duration of the initial Interest Period applicable thereto (subject to the provisions of the definition of Interest Period). Each Revolving Borrowing shall consist entirely of Base Rate Loans or Term SOFR Loans, as the Borrower may request. The aggregate principal amount of each Term SOFR Borrowing shall not be less than

\$1,000,000 or a larger multiple of \$1,000,000, and the aggregate principal amount of each Base Rate Borrowing shall not be less than \$1,000,000 or a larger multiple of \$250,000; provided that Base Rate Loans made pursuant to Section 2.4 or Section 2.22(d) may be made in lesser amounts as provided therein. At no time shall the total number of Term SOFR Borrowings outstanding at any time exceed ten (10). Promptly following the receipt of a Notice of Revolving Borrowing in accordance herewith, the Administrative Agent shall advise each Lender of the details thereof and the amount of such Lender's Revolving Loan to be made as part of the requested Revolving Borrowing.

**Section 2.4 Swingline Commitment.**

(a) Subject to the terms and conditions set forth herein, the Swingline Lender may, in its sole discretion, make Swingline Loans in Dollars to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time not to exceed the lesser of (i) the Swingline Commitment then in effect and (ii) the difference between the Aggregate Revolving Commitment Amount and the Dollar Equivalent of the aggregate Revolving Credit Exposures of all Lenders; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. The Borrower shall be entitled to borrow, repay and reborrow Swingline Loans in accordance with the terms and conditions of this Agreement.

(b) The Borrower shall give the Administrative Agent written notice of each Swingline Borrowing, substantially in the form of Exhibit E attached hereto (a "Notice of Swingline Borrowing"), prior to 10:00 a.m. New York City time (or such later time as the Swingline Lender may agree in its sole discretion) on the requested date of each Swingline Borrowing. Each Notice of Swingline Borrowing shall be irrevocable and shall specify (i) the principal amount of such Swingline Borrowing, (ii) the date of such Swingline Borrowing (which shall be a Business Day) and (iii) the account of the Borrower to which the proceeds of such Swingline Borrowing should be credited. The Administrative Agent will promptly advise the Swingline Lender of each Notice of Swingline Borrowing. The aggregate principal amount of each Swingline Loan shall not be less than \$500,000 or a larger multiple of \$100,000, or such other minimum amounts agreed to by the Swingline Lender and the Borrower. The Swingline Lender will make the proceeds of each Swingline Loan available to the Borrower in Dollars in immediately available funds at the account specified by the Borrower in the applicable Notice of Swingline Borrowing not later than 1:00 p.m. on the requested date of such Swingline Borrowing.

(c) The Swingline Lender, at any time and from time to time in its sole discretion, may, but in no event no less frequently than once each calendar week shall, on behalf of the Borrower (which hereby irrevocably authorizes and directs the Swingline Lender to act on its behalf), give a Notice of Swingline Borrowing to the Administrative Agent requesting the Lenders (including the Swingline Lender) to make Base Rate Loans in an amount equal to the unpaid principal amount of any Swingline Loan. Each Lender will make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent for the account of the Swingline Lender in accordance with Section 2.6, which will be used solely for the repayment of such Swingline Loan.

(d) If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Lender (other than the Swingline Lender) shall purchase an undivided participating interest in such Swingline Loan in an amount equal to its Pro Rata Share thereof on the date that such Base Rate Borrowing should have occurred. On the date of such required purchase, each Lender shall promptly transfer, in immediately available funds, the amount of its participating interest to the Administrative Agent for the account of the Swingline Lender.

(e) Each Lender's obligation to make a Base Rate Loan pursuant to subsection (c) of this Section or to purchase participating interests pursuant to subsection (d) of this Section shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right that such Lender or any other Person may have or claim against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of any Lender's Revolving Commitment, (iii) the existence (or alleged existence) of any event or condition which has had or could

reasonably be expected to have a Material Adverse Effect, (iv) any breach of this Agreement or any other Loan Document by any Loan Party, the Administrative Agent or any Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If such amount is not in fact made available to the Swingline Lender by any Lender, the Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof (x) at the Federal Funds Effective Rate until the second Business Day after such demand and (y) at the Base Rate at all times thereafter. Until such time as such Lender makes its required payment, the Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of the unpaid participation for all purposes of the Loan Documents. In addition, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Loans and any other amounts due to it hereunder to the Swingline Lender to fund the amount of such Lender's participation interest in such Swingline Loans that such Lender failed to fund pursuant to this Section, until such amount has been purchased in full.

Section 2.5 **[Reserved.]**

Section 2.6 **Funding of Borrowings.**

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by (i) 1:00 p.m. New York City time, in the case of a Term SOFR Borrowing, 1:00 p.m., New York City time, in the case of a Base Rate Borrowing for which notice has been provided by 11:00 a.m. New York City time at least one (1) Business Day prior to the date of the proposed Borrowing or (ii) 2:00 p.m. New York City time, in the case of a Base Rate Borrowing for which notice has been provided by 11:00 a.m. New York City time on the date of the proposed Base Rate Borrowing, in each case to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that the Swingline Loans will be made as set forth in Section 2.4. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts that it receives, in like funds by the close of business on such proposed date, to an account designated by the Borrower to the Administrative Agent.

(b) Unless the Administrative Agent shall have been notified by any Lender prior to 5:00 p.m. one (1) Business Day prior to the date of a Term SOFR Borrowing or 2:00 p.m. on the date of a Base Rate Borrowing in which such Lender is to participate that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date, and the Administrative Agent, in reliance on such assumption, may make available to the Borrower on such date a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender on the date of such Borrowing, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest (x) at the Federal Funds Effective Rate until the second Business Day after such demand and (y) at the Base Rate at all times thereafter. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest at the rate specified for such Borrowing. Nothing in this subsection shall be deemed to relieve any Lender from its obligation to fund its Pro Rata Share of any Borrowing hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any default by such Lender hereunder.

(c) All Revolving Borrowings shall be made by the Lenders on the basis of their respective Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in its obligations hereunder, and each Lender shall be obligated to make its Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

Section 2.7 **Interest Elections.**

(a) Each Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing. Thereafter, the Borrower may elect to convert such Borrowing into a different Type or to continue such Borrowing, all as provided in this Section but subject to Section 2.16. The Borrower may



elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall give the Administrative Agent written notice of each Borrowing that is to be converted or continued, as the case may be, substantially in the form of Exhibit F attached hereto (a “Notice of Conversion/Continuation”) (x) prior to 11:00 a.m. one (1) Business Day prior to the requested date of a conversion into a Base Rate Borrowing and (y) prior to 12:00 p.m. three (3) Business Days prior to a continuation of or conversion into a Term SOFR Borrowing. Each such Notice of Conversion/Continuation shall be irrevocable and shall specify (i) the Borrowing to which such Notice of Conversion/Continuation applies and, if different options are being elected with respect to different portions thereof, the portions thereof that are to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) shall be specified for each resulting Borrowing), (ii) the effective date of the election made pursuant to such Notice of Conversion/Continuation, which shall be a Business Day, (iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Term SOFR Borrowing, and (iv) if the resulting Borrowing is to be a Term SOFR Borrowing, the Interest Period applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of “Interest Period”. If any such Notice of Conversion/Continuation requests a Term SOFR Borrowing but does not specify an Interest Period, the Borrower shall be deemed to have selected an Interest Period of one month. The principal amount of any resulting Borrowing shall satisfy the minimum borrowing amount for Term SOFR Borrowings and Base Rate Borrowings set forth in Section 2.3.

(c) If, on the expiration of any Interest Period in respect of any Term SOFR Borrowing, the Borrower shall have failed to deliver a Notice of Conversion/Continuation, then, unless such Borrowing is repaid as provided herein, the Borrower shall be deemed to have elected to convert such Borrowing to a Base Rate Borrowing. No Borrowing may be converted into, or continued as, a Term SOFR Borrowing if an Event of Default exists and the Administrative Agent or the Required Lenders shall have notified the Borrower in writing of their determination not to permit such conversion or continuation. No conversion of any Term SOFR Loan shall be permitted except on the last day of the Interest Period in respect thereof.

(d) Upon receipt of any Notice of Conversion/Continuation, the Administrative Agent shall promptly notify each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

#### Section 2.8 **Optional Reduction and Termination of Commitments**.

(a) Unless previously terminated, all Revolving Commitments, Swingline Commitments and LC Commitments shall terminate on the Maturity Date.

(b) Upon at least three (3) Business Days’ prior written notice to the Administrative Agent (which notice shall be irrevocable), the Borrower may reduce the Aggregate Revolving Commitments in part or terminate the Aggregate Revolving Commitments in whole; provided that (i) any partial reduction shall apply to reduce proportionately and permanently the Revolving Commitment of each Lender, (ii) any partial reduction pursuant to this Section shall be in an amount of at least \$1,000,000 and any larger multiple of \$1,000,000, and (iii) no such reduction shall be permitted which would reduce the Aggregate Revolving Commitment Amount to an amount less than the Dollar Equivalent of the aggregate outstanding Revolving Credit Exposure of all Lenders; provided, further, that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of termination) if such condition is not satisfied. Any such reduction in the Aggregate Revolving Commitment Amount below the principal amount of the Swingline Commitment and the LC Commitment shall result in a dollar-for-dollar reduction in the Swingline Commitment and the LC Commitment.

(c) With the written approval of the Administrative Agent, the Borrower may terminate (on a non-ratable basis) the unused amount of the Revolving Commitment of a Defaulting Lender, and in such event the provisions of Section 2.26 will apply to all amounts thereafter paid by the Borrower for the account of any such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that such termination will not be deemed to be a waiver or release of any claim that the Borrower, the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender may have against such Defaulting Lender.

Section 2.9 **Repayment of Loans.** The outstanding principal amount of all Revolving Loans and Swingline Loans shall be due and payable in Dollars (together with accrued and unpaid interest thereon) on the Maturity Date.

Section 2.10 **Evidence of Indebtedness.**

(a) Each Lender shall maintain in accordance with its usual practice appropriate records evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable thereon and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain appropriate records in which shall be recorded (i) the Revolving Commitment of each Lender, (ii) the amount of each Loan made hereunder by each Lender, the Class and Type thereof and, in the case of each Term SOFR Loan, the Interest Period applicable thereto, (iii) the date of any continuation of any Loan pursuant to Section 2.7, (iv) the date of any conversion of all or a portion of any Loan to another Type pursuant to Section 2.7, (v) the date and amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder in respect of the Loans and (vi) both the date and amount of any sum received by the Administrative Agent hereunder from the Borrower in respect of the Loans and each Lender's Pro Rata Share thereof. Subject to the entries in the Register, the entries made in such records shall be prima facie evidence absent manifest error of the existence and amounts of the obligations of the Borrower therein recorded; provided that the failure or delay of any Lender or the Administrative Agent in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans (both principal and unpaid accrued interest) of such Lender in accordance with the terms of this Agreement.

(b) This Agreement evidences the obligation of the Borrower to repay the Loans and is being executed as a "noteless" credit agreement. However, at the request of any Lender (including the Swingline Lender) at any time, the Borrower agrees that it will prepare, execute and deliver to such Lender a promissory note payable to the Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment permitted hereunder) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.11 **Optional Prepayments.** The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, without premium or penalty, by giving written notice to the Administrative Agent no later than (i) in the case of any prepayment of any Term SOFR Borrowing, 12:00 p.m. not less than three (3) Business Days prior to the date of such prepayment, (ii) in the case of any prepayment of any Base Rate Borrowing, not less than one (1) Business Day prior to the date of such prepayment, and (iii) in the case of any prepayment of any Swingline Borrowing, prior to 11:00 a.m. on the date of such prepayment. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of each Borrowing or portion thereof to be prepaid; provided that such notice may state that such notice is conditioned upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of termination) if such condition is not satisfied. Upon receipt of any such notice, the Administrative Agent shall promptly notify each affected Lender of the contents thereof and of such Lender's Pro Rata Share of any such prepayment. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice, together with accrued interest to such date on the amount so prepaid in accordance with Section 2.13(d); provided that if a Term SOFR Borrowing is prepaid on a

date that is prior to the last day of an Interest Period applicable thereto, the Borrower shall also pay all amounts required pursuant to Section 2.19. Each partial prepayment of any Loan shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type pursuant to Section 2.2 or, in the case of a Swingline Loan, pursuant to Section 2.4. Each prepayment of a Borrowing shall be applied ratably to the Loans comprising such Borrowing.

**Section 2.12 Mandatory Prepayments.** If at any time the Dollar Equivalent of the aggregate Revolving Credit Exposure of all Lenders exceeds the Aggregate Revolving Commitment Amount, as reduced pursuant to Section 2.8 or otherwise, then the Borrower shall immediately repay the Swingline Loans and the Revolving Loans in an amount equal to such excess, together with all accrued and unpaid interest on such excess amount and any amounts due under Section 2.19. Each prepayment shall be applied as follows: first, to the Swingline Loans to the full extent thereof; second, to the Base Rate Loans to the full extent thereof; and third, to the Term SOFR Loans to the full extent thereof. If, after giving effect to prepayment of all Swingline Loans and Revolving Loans, the Dollar Equivalent of the aggregate Revolving Credit Exposure of all Lenders exceeds the Aggregate Revolving Commitment Amount, the Borrower shall Cash Collateralize its reimbursement obligations with respect to all Letters of Credit in an amount equal to such excess.

**Section 2.13 Interest on Loans.**

(a) The Borrower shall pay interest on (i) each Base Rate Loan at the Base Rate plus the Applicable Margin in effect from time to time and (ii) each Term SOFR Loan at the Term SOFR Rate for the applicable Interest Period in effect for such Loan plus the Applicable Margin in effect from time to time.

(b) The Borrower shall pay interest on each Swingline Loan at the Base Rate plus the Applicable Margin in effect from time to time.

(c) Notwithstanding subsections (a) and (b) of this Section, if any Event of Default exists under Sections 8.1(a) or (f), the Loans and other Obligations under the Loan Documents not paid when due shall bear interest at a rate per annum equal to (i) in the case of the Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.00% and (ii) in the case of any other Obligation, the rate then applicable to Base Rate Loans plus 2.00%, in each case, with respect to clauses (i) and (ii) above, from the date of such Event of Default until the earlier of the date such amount is paid in full (after as well as before judgment) and the date such Event of Default is cured or waived. All such default interest shall be payable from time to time on demand.

(d) Interest on the principal amount of all Loans shall accrue from and including the date such Loans are made to but excluding the date of any repayment thereof. Interest on all outstanding Base Rate Loans and Swingline Loans shall be payable quarterly in arrears on the last day of each March, June, September and December and on the Maturity Date. Interest on all outstanding Term SOFR Loans shall be payable on the last day of each Interest Period applicable thereto, and, in the case of any Term SOFR Loans having an Interest Period in excess of three months, on each day which occurs every three months after the initial date of such Interest Period, and on the Maturity Date. Interest on any Loan which is converted into a Loan of another Type or which is repaid or prepaid shall be payable on the date of such conversion or on the date of any such repayment or prepayment (on the amount repaid or prepaid) thereof.

(e) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder and shall promptly notify the Borrower and the Lenders of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error. The Administrative Agent shall, at the written request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.13(e).

**Section 2.14 Fees.**

(a) The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times previously agreed upon in writing by the Borrower and the Administrative Agent.

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Percentage *per annum* (determined daily in accordance with Schedule I) on the daily amount of the unused Revolving Commitment of such Lender during the Availability Period. For purposes of computing the commitment fee, the Revolving Commitment of each Lender shall be deemed used to the extent of the outstanding Revolving Loans and LC Exposure, but not Swingline Exposure, of such Lender.

(c) The Borrower agrees to pay (i) to the Administrative Agent, for the account of each Lender, a letter of credit fee with respect to its participation in each Letter of Credit, which shall accrue at a rate *per annum* equal to the Applicable Margin for Term SOFR Loans then in effect on the Dollar Equivalent of the average daily amount of such Lender's LC Exposure attributable to such Letter of Credit during the period from and including the date of issuance of such Letter of Credit to but excluding the date on which such Letter of Credit expires or is drawn in full (including, without limitation, any LC Exposure that remains outstanding after the Maturity Date) and (ii) to each Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% on the Dollar Equivalent of the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the Availability Period (or until the date that such Letter of Credit is irrevocably cancelled, whichever is later), as well as each Issuing Bank's standard fees with respect to issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder.

(d) The Borrower shall pay, to the applicable parties, on the Closing Date the fees in the Fee Letters(s) payable on the Closing Date.

(e) Accrued fees under subsections (b) and (c) of this Section shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing on September 30, 2020, and on the Maturity Date (and, if later, the date the Loans and LC Exposure shall be repaid in their entirety); provided that any such fees accruing after the Maturity Date shall be payable on demand.

Section 2.15 **Computation of Interest and Fees.** Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate shall be calculated on the basis of a 365 (or 366 days, as the case may be), day year for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.16 **Inability to Determine Interest Rates.**

(a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment (which Borrower shall be party to) to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No Swap Agreement shall constitute a "Loan Document" for purposes of this Section 2.16.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes 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.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.16(d). Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.16, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their reasonable discretion, after consultation with the Borrower, except, in each case, as expressly required pursuant to this Section 3.03.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including any Term Benchmark) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion and after consultation with the Borrower or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that any tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

(f) Inability to Determine Rates. Subject to this Section 2.16, if (i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Term Benchmark" cannot be determined in accordance with the terms of this Agreement on or prior to the first day of any Interest Period or (ii) the Required Lenders determine that for any reason in connection with any request for a Term Benchmark Loan or a conversion or a continuation thereof that Term Benchmark for any requested Interest Period with respect to a proposed Term Benchmark Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, then, in each case, the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice

thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make or continue Term Benchmark Loans or to convert Base Rate Loans to Term Benchmark Loans shall be suspended (to the extent of the affected Term Benchmark Loans or, in the case of a Term Benchmark Borrowing, the affected Interest Periods) until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term Benchmark Loans (to the extent of the affected Term Benchmark Loans or, in the case of a Term Benchmark Borrowing, the affected Interest Periods) or, failing that, in the case of any request for an affected Term Benchmark Borrowing, then such request shall be ineffective and (ii) any outstanding affected Term Benchmark Loans will be deemed to have been converted into Base Rate Loans. Upon any such conversion, the Borrower shall also pay any additional amounts required pursuant to Section 3.05. If the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Term Benchmark” cannot be determined in accordance with the terms of this Agreement, in each case on any given day, the interest rate on Base Rate Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of “Base Rate” until the Administrative Agent revokes such determination.

Section 2.17 **Illegality.** If any Change in Law shall make it unlawful or impossible for any Lender to make, maintain or fund any Term SOFR Loan and such Lender shall so notify the Administrative Agent, the Administrative Agent shall promptly give notice thereof to the Borrower and the other Lenders, whereupon until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Revolving Term SOFR Loans, or to continue or convert outstanding Loans as or into Term SOFR Loans, shall be suspended. In the case of the making of a Term SOFR Borrowing, such Lender’s Revolving Loan shall be made as a Base Rate Loan as part of the same Revolving Borrowing for the same Interest Period and, if the affected Term SOFR Loan is then outstanding, such Loan shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Term SOFR Loan if such Lender may lawfully continue to maintain such Loan to such date or (ii) immediately if such Lender shall determine that it may not lawfully continue to maintain such Term SOFR Loan to such date. Notwithstanding the foregoing, the affected Lender shall, prior to giving such notice to the Administrative Agent, use reasonable efforts to designate a different Applicable Lending Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Lender in the good faith exercise of its discretion.

Section 2.18 **Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of the Term SOFR Rate hereunder against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in Term SOFR) or any Issuing Bank; or

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender, any Issuing Bank any other condition affecting this Agreement or any Term SOFR Loans made by such Lender or any Letter of Credit or any participation therein;

and the result of any of the foregoing is to increase the cost to such Lender of making, converting into, continuing or maintaining a Term SOFR Loan or to increase the cost to such Lender or such Issuing Bank of participating in or issuing any Letter of Credit or to reduce the amount received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount),

then, from time to time, such Lender or such Issuing Bank may provide the Borrower (with a copy thereof to the Administrative Agent) with written notice and demand with respect to such increased costs or reduced amounts, and within thirty (30) days after receipt of such notice and a reasonably detailed written demand, the Borrower shall pay to such Lender or such Issuing Bank, as the case may be, such additional amounts as will compensate such Lender or such Issuing Bank for any such increased costs incurred or reduction suffered.

(b) If any Lender or any Issuing Bank shall have determined that any Change in Law regarding capital or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital (or on the capital of the Parent Company of such Lender or such Issuing Bank) as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender, such Issuing Bank or such Parent Company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies or the policies of such Parent Company with respect to capital adequacy and liquidity), then, from time to time, such Lender or such Issuing Bank may provide the Borrower (with a copy thereof to the Administrative Agent) with written notice and demand with respect to such reduced amounts, and within thirty (30) days after receipt of such notice and a reasonably detailed written demand the Borrower shall pay to such Lender or such Issuing Bank, as the case may be, such additional amounts as will compensate such Lender, such Issuing Bank or such Parent Company for any such reduction suffered.

(c) A certificate of such Lender or such Issuing Bank setting forth the amount or amounts necessary to compensate such Lender, such Issuing Bank or the Parent Company of such Lender or such Issuing Bank, as the case may be, specified in subsection (a) or (b) of this Section shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive, absent manifest error.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or any Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank under this Section for any increased costs or reductions incurred more than six (6) months prior to the date that such Lender or such Issuing Bank notifies the Borrower of such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then such six-month period shall be extended to include the period of such retroactive effect.

Section 2.19 **Funding Indemnity.** In the event of (a) the payment of any principal of a Term SOFR Loan prior to the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Term SOFR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure by the Borrower to borrow, prepay, convert or continue any Term SOFR Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), or (d) the failure by the Borrower to make payment of any drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrower shall compensate each Lender and each Issuing Bank (as applicable), within thirty (30) days after written demand from such applicable Lender or Issuing Bank (which demand shall set forth in reasonable detail the basis for requesting such amount), for any loss (other than lost profits), cost or expense attributable to such event. In the case of a Term SOFR Loan, such loss, cost or expense shall be deemed to include an amount determined by such Lender to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such Term SOFR Loan if such event had not occurred at the Term SOFR Rate applicable to such Term SOFR Loan for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Term SOFR Loan) (excluding the Applicable Margin) over (B) the amount of interest that would accrue on the principal amount of such Term SOFR Loan for the same period if the Term SOFR Rate were set on the date such Term SOFR Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such Term SOFR Loan (excluding the Applicable Margin). A certificate as to any additional amount payable under this

Section submitted to the Borrower by any Lender or any Issuing Bank (with a copy to the Administrative Agent) shall be conclusive, absent manifest error.

Section 2.20 **Taxes.**

(a) **Defined Terms.** For purposes of this Section 2.20, the term “Lender” includes Issuing Bank and the term “applicable law” includes FATCA.

(b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) **Payment of Other Taxes by the Borrower.** 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, any Other Taxes.

(d) **Indemnification by the Borrower.** The Borrower shall indemnify each Recipient, within ten (10) Business Days after reasonably detailed written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Administrative Agent, within ten (10) Business Days after a written demand therefor, 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 Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.4(d) 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 any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Borrower or any other Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower or other Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) **Status of Lenders.**



(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.20(g)(ii)(A), (B) and (D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-

Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 2.20 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 2.21 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.**

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.18, 2.19 or 2.20, or otherwise) prior to 1:00 p.m. on the date when due, in immediately available funds, free and clear of any defenses, rights of set-off, counterclaim, or (subject to Section 2.20) withholding or deduction of taxes. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Payment Office, except payments to be made directly to the Issuing Banks or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.18, 2.19 or 2.20 and 10.3 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension. All payments hereunder shall be made in Dollars or, to the extent expressly set forth in Section 2.22, the applicable Alternative Currency.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied as follows: first, to all fees and reimbursable expenses of the Administrative Agent then due and payable pursuant to any of the Loan Documents; second, to all reimbursable expenses of the Lenders and all fees and reimbursable expenses of the Issuing Banks then due and payable pursuant to any of the Loan Documents, *pro rata* to the Lenders and the Issuing Banks based on their respective pro rata shares of such fees and expenses; third, to all interest and fees then due and payable hereunder, pro rata to the Lenders based on their respective pro rata shares of such interest and fees; and fourth, to all principal of the Loans and unreimbursed LC Disbursements then due and payable hereunder, pro rata to the parties entitled thereto based on their respective *pro rata* shares of such principal and unreimbursed LC Disbursements.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans that would result in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Credit Exposure and accrued interest and fees thereon than the proportion received by any other Lender with respect to its Revolving Credit Exposure, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Credit Exposure of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Credit Exposure; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this subsection 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 (including the application of funds arising from the existence of a Defaulting Lender) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Credit Exposure to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof

(as to which the provisions of this subsection shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount or amounts due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including the Overnight Foreign Currency Rate in the case of Letters of Credit denominated in an Alternative Currency).

#### Section 2.22 **Letters of Credit.**

(a) During the Availability Period, each Issuing Bank, in reliance upon the agreements of the other Lenders pursuant to subsections (d) and (e) of this Section, agrees to issue, at the request of the Borrower, Letters of Credit denominated in Dollars or in an Alternative Currency for the account of the Borrower (or any Restricted Subsidiary, provided the Borrower is liable hereunder in respect of any such Letter of Credit (the Borrower hereby acknowledging 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)) on the terms and conditions hereinafter set forth; provided that (i) each Letter of Credit shall expire on the earlier of (A) the date one year after the date of issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (B) the date that is five (5) Business Days prior to the Maturity Date (provided that any Letter of Credit with a one-year term may provide for the automatic renewal thereof on terms satisfactory to the applicable Issuing Bank for additional one-year periods not to extend past the date in clause (B) above unless the Borrower shall have made arrangements satisfactory to the applicable Issuing Bank (which may constitute the deposit of Cash Collateral at the discretion of such Issuing Bank but in any event shall require the deposit no later than five Business Days before the Maturity Date of Cash Collateral in an amount in dollars equal to 105% of the LC Exposure for such Letter of Credit); provided that any such Letter of Credit must allow the Issuing Bank to prevent the renewal thereof on at least one occasion per year by giving notice); (ii) each Letter of Credit shall be in a stated amount of the Dollar Equivalent of at least \$100,000; (iii) the Borrower may not request any Letter of Credit if, after giving effect to such issuance, (A) the Dollar Equivalent of the aggregate LC Exposure would exceed the aggregate LC Commitment Amount, (B) the Dollar Equivalent of the LC Exposure issued by any Issuing Bank would exceed the LC Commitment of such Issuing Bank unless otherwise agreed to by the applicable Issuing Bank in writing or (C) the Dollar Equivalent of the aggregate Revolving Credit Exposure of all Lenders would exceed the Aggregate Revolving Commitment Amount; and (iv) the Borrower shall not request, and the Issuing Banks shall have no obligation to issue, any Letter of Credit the proceeds of which would be made available to any Person (x) to fund any activity or business of or with any Sanctioned Person or in any Sanctioned Countries, that, at the time of such funding, is the subject of any Sanctions or (y) in any manner that would result in a violation of any Sanctions by any party to this Agreement. Each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Banks without recourse a participation in each Letter of Credit equal to such Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit on the date of issuance. Each issuance of a Letter of Credit shall be deemed to utilize the Revolving Commitment of each Lender by an amount equal to the amount of such participation.

(b) To request the issuance of a Letter of Credit (or any amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall give the applicable Issuing Bank and the

Administrative Agent irrevocable written notice at least three (3) Business Days, in the case of Letter of Credit denominated in Dollars, or five (5) Business Days, in the case of Letter of Credit denominated in an Alternative Currency, prior to the requested date (or such shorter period as an Issuing Bank may agree in a particular instance in its sole discretion) of such issuance specifying the date (which shall be a Business Day) such Letter of Credit is to be issued (or amended, renewed or extended, as the case may be), the expiration date of such Letter of Credit, the amount and currency of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. In addition to the satisfaction of the conditions in Article III, the issuance of such Letter of Credit (or any amendment which increases the amount of such Letter of Credit) will be subject to the further conditions that such Letter of Credit shall be in such form and contain such terms as the applicable Issuing Bank shall approve and that the Borrower shall have executed and delivered any additional applications, agreements and instruments relating to such Letter of Credit as the applicable Issuing Bank shall reasonably require; provided that in the event of any conflict between such applications, agreements or instruments and this Agreement, the terms of this Agreement shall control.

(c) At least two (2) Business Days prior to the issuance of any Letter of Credit, the applicable Issuing Bank will confirm with the Administrative Agent in writing that the Administrative Agent has received such notice, and, if not, the applicable Issuing Bank will provide the Administrative Agent with a copy thereof. Unless the applicable Issuing Bank has received notice from the Administrative Agent, on or before the Business Day immediately preceding the date the applicable Issuing Bank is to issue the requested Letter of Credit, directing the applicable Issuing Bank not to issue the Letter of Credit because such issuance is not then permitted hereunder because of the limitations set forth in subsection (a) of this Section or that one or more conditions specified in Article III are not then satisfied, then, subject to the terms and conditions hereof, the applicable Issuing Bank shall, on the requested date, issue such Letter of Credit in accordance with the applicable Issuing Bank's usual and customary business practices.

(d) Each applicable Issuing Bank shall examine all documents purporting to represent a demand for payment under a Letter of Credit promptly following its receipt thereof. Each applicable Issuing Bank shall notify the Borrower and the Administrative Agent of such demand for payment and whether the applicable Issuing Bank has made or will make a LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the applicable Issuing Bank and the Lenders with respect to such LC Disbursement. The Borrower shall be irrevocably and unconditionally obligated to reimburse the applicable Issuing Bank for any LC Disbursements paid by the applicable Issuing Bank in respect of such drawing, without presentment, demand or other formalities of any kind. Such reimbursement shall be in Dollars, unless, in the case of a Letter of Credit denominated in an Alternative Currency, (i) the applicable Issuing Bank (at its option) shall have specified in such notice that it will require reimbursement in such Alternative Currency, or (ii) in the absence of any such requirement for reimbursement in such Alternative Currency, the Borrower shall have notified the applicable Issuing Bank promptly following receipt of the notice of drawing that the Borrower will reimburse the applicable Issuing Bank in such Alternative Currency. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the applicable Issuing Bank shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. If the Borrower shall have received notice from the applicable Issuing Bank on or prior to 11:00 a.m. on the date of payment by the applicable Issuing Bank under a Letter of Credit to be reimbursed in Dollars, not later than 4:00 p.m. on such date of payment by the applicable Issuing Bank, or, if the Borrower shall have received notice later than 11:00 a.m. on the date of payment by the applicable Issuing Bank under a Letter of Credit to be reimbursed in Dollars, not later than 11:00 a.m. on the immediately following Business Day, or the Applicable Time on the date of any payment by the applicable Issuing Bank under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), the Borrower shall reimburse the applicable Issuing Bank through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. In the event that (i) a drawing denominated in an Alternative Currency is to be reimbursed in Dollars and (ii) the Dollar amount paid by the Borrower, whether on or after the Honor Date, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, the Borrower agrees, as a separate and independent obligation, to indemnify the

applicable Issuing Bank for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing. If the Borrower fails to so reimburse the applicable Issuing Bank by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date and the amount of the unreimbursed drawing (expressed in Dollars in an amount equal to the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency). In such event, the Borrower shall be deemed to have timely given a Notice of Revolving Borrowing to the Administrative Agent requesting the Lenders to make a Base Rate Borrowing on the date on which such drawing is honored in an exact amount of the Dollar Equivalent due to the applicable Issuing Bank; provided that for purposes solely of such Borrowing, the conditions precedent set forth in Section 3.2 hereof shall not be applicable and the minimum amount and multiples for Base Rate Borrowings specified in Section 2.3 hereof shall not be applicable. The Administrative Agent shall notify the Lenders of such Borrowing in accordance with Section 2.3, and each Lender shall make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent in Dollars for the account of the applicable Issuing Bank in accordance with Section 2.6. The proceeds of such Borrowing shall be applied directly by the Administrative Agent to reimburse the applicable Issuing Bank for such LC Disbursement.

(e) If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Lender (other than the applicable Issuing Bank) shall be obligated to fund the participation that such Lender purchased pursuant to subsection (a) of this Section in an amount equal to its Pro Rata Share of such LC Disbursement on and as of the date which such Base Rate Borrowing should have occurred. Each Lender's obligation to fund its participation shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right that such Lender or any other Person may have against the applicable Issuing Bank or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of the Aggregate Revolving Commitments, (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any of its Subsidiaries, (iv) any breach of this Agreement by the Borrower or any other Lender, (v) any amendment, renewal or extension of any Letter of Credit or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. On the date that such participation is required to be funded, each Lender shall promptly transfer, in immediately available funds in Dollars, the amount of its participation to the Administrative Agent for the account of the applicable Issuing Bank. Whenever, at any time after the applicable Issuing Bank has received from any such Lender the funds for its participation in a LC Disbursement, the applicable Issuing Bank (or the Administrative Agent on its behalf) receives any payment on account thereof, the Administrative Agent or the applicable Issuing Bank, as the case may be, will distribute to such Lender its Pro Rata Share of such payment; provided that if such payment is required to be returned for any reason to the Borrower or to a trustee, receiver, liquidator, custodian or similar official in any bankruptcy proceeding, such Lender will return to the Administrative Agent or the applicable Issuing Bank any portion thereof previously distributed by the Administrative Agent or the applicable Issuing Bank to it.

(f) To the extent that any Lender shall fail to pay any amount required to be paid pursuant to subsection (d) or (e) of this Section on the due date therefor, such Lender shall pay interest to the applicable Issuing Bank (through the Administrative Agent) on such amount from such due date to the date such payment is made at a rate *per annum* equal to the Federal Funds Effective Rate; provided that if such Lender shall fail to make such payment to the applicable Issuing Bank within three (3) Business Days of such due date, then, retroactively to the due date, such Lender shall be obligated to pay interest on such amount at the Base Rate.

(g) If at any time the Dollar Equivalent of the aggregate LC Exposure of all Lenders exceeds the LC Commitment Amount, as reduced pursuant to Section 2.8 or otherwise, then the Borrower shall Cash Collateralize its reimbursement obligations with respect to all Letters of Credit in an aggregate amount sufficient to reduce such LC Exposure as of such date of payment to an amount not to exceed the LC Commitment Amount then in effect. Additionally, if any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders demanding that its reimbursement obligations with respect to the Letters of Credit be Cash Collateralized pursuant to this subsection, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the applicable

Issuing Bank and the Lenders, an amount in cash equal to 105% of the Dollar Equivalent of the aggregate LC Exposure of all Lenders as of such date plus any accrued and unpaid fees thereon; provided that such obligation to Cash Collateralize the reimbursement obligations of the Borrower with respect to the Letters of Credit shall become effective immediately, and such deposit shall become immediately due and payable, without demand or notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.1(f). Any such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. The Borrower agrees to execute any documents and/or certificates to effectuate the intent of this subsection. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it had not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, with the consent of the Required Lenders, be applied to satisfy other obligations of the Borrower under this Agreement and the other Loan Documents. If the Borrower is required to Cash Collateralize its reimbursement obligations with respect to the Letters of Credit as a result of the occurrence of an Event of Default, such cash collateral so posted (to the extent not so applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

(h) Upon the request of any Lender, but no more frequently than quarterly, each Issuing Bank shall deliver (through the Administrative Agent) to each Lender and the Borrower a report describing the aggregate Letters of Credit then outstanding. Upon the request of any Lender from time to time, each Issuing Bank shall deliver to such Lender any other information reasonably requested by such Lender with respect to each Letter of Credit then outstanding.

(i) The Borrower's obligation to reimburse LC Disbursements hereunder shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever and irrespective of any of the following circumstances:

- (i) any lack of validity or enforceability of any Letter of Credit or this Agreement;
- (ii) the existence of any claim, set-off, defense or other right which the Borrower or any Subsidiary or Affiliate of the Borrower may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such beneficiary or transferee may be acting), any Lender (including the Issuing Banks) or any other Person, whether in connection with this Agreement or the Letter of Credit or any document related hereto or thereto or any unrelated transaction;
- (iii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
- (iv) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document to the applicable Issuing Bank that does not comply with the terms of such Letter of Credit;
- (v) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of set-off against, the Borrower's obligations hereunder;
- (vi) the existence of a Default or an Event of Default; or

(vii) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Restricted Subsidiary or in the relevant currency markets generally.

Neither the Administrative Agent, any Issuing Bank, any Lender nor any Related Party of any of the foregoing shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to above), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any actual direct damages (as opposed to special, indirect (including claims for lost profits or other consequential damages), or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the applicable Issuing Bank's failure to exercise due care when determining whether drafts or other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the applicable Issuing Bank (as finally determined by a court of competent jurisdiction), the applicable Issuing Bank shall be deemed to have exercised due care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(j) Unless otherwise expressly agreed by the applicable Issuing Bank and the Borrower when a Letter of Credit is issued and subject to applicable laws, (i) each standby Letter of Credit shall be governed by the "International Standby Practices 1998" (ISP98) (or such later revision as may be published by the Institute of International Banking Law & Practice on any date any Letter of Credit may be issued), (ii) each documentary Letter of Credit shall be governed by the Uniform Customs and Practices for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (or such later revision as may be published by the International Chamber of Commerce on any date any Letter of Credit may be issued) and (iii) the Borrower shall specify the foregoing in each letter of credit application submitted for the issuance of a Letter of Credit.

(k) Any Issuing Bank may resign as an "Issuing Bank" hereunder upon 30 days' prior written notice to the Administrative Agent, the Lenders and the Borrower; provided that on or prior to the expiration of such 30-day period with respect to such resignation, the relevant Issuing Bank shall have identified a successor Issuing Bank reasonably acceptable to the Borrower willing to accept its appointment as successor Issuing Bank, and the effectiveness of such resignation shall be conditioned upon such successor assuming the rights and duties of the resigning Issuing Bank. In the event of any such resignation as Issuing Bank, the Borrower shall be entitled to appoint from among the Lenders a successor Issuing Bank hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of the resigning Issuing Bank except as expressly provided above. The Borrower may terminate the appointment of any Issuing Bank as an "Issuing Bank" hereunder by providing a written notice thereof to such Issuing Bank, with a copy to the Administrative Agent. Any such termination shall become effective upon the earlier of (i) such Issuing Bank acknowledging receipt of such notice and (ii) the third Business Day following the date of the delivery thereof; provided that no such termination shall become effective until and unless the LC Exposure attributable to Letters of Credit issued by such Issuing Bank (or its Affiliates) shall have been reduced to zero. At the time any such resignation or termination shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the resigning or terminated Issuing Bank pursuant to Section 2.14(c). Notwithstanding the effectiveness of any such resignation or termination, the resigning or terminated Issuing Bank shall remain a party hereto and shall continue to have all the rights of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation or termination, but shall not be required to issue any additional Letters of Credit.



## Section 2.23 Incremental Facility.

(a) The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request one or more tranches of term loans (each an “Incremental Term Facility”) or an increase in the amount of the Revolving Facility (each, an “Incremental Revolving Facility”; together with the Incremental Term Facilities, each an “Incremental Facility”); provided that (i) at the time of such request, no Event of Default shall have occurred and be continuing, (ii) the Borrower shall be in compliance with the covenants contained in Article VI determined on a pro forma basis, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for testing pro forma compliance with the covenants contained in Article VI, as of the last day of the most recent period of the Borrower for which financial statements are available as if any term loans under the Facility and such Incremental Facility had been outstanding (without netting the cash proceeds thereof) and any revolving commitment under such Incremental Facility (to the extent available to make Loans) had been fully used on the last day of such period; provided, that, for an Incremental Facility that is requested in connection with the financing of a Limited Condition Acquisition, the conditions in clause (i) and (ii) shall be subject to Section 1.7 and (iii) the aggregate principal amount of the Incremental Facilities shall not exceed (x) the Fixed Incremental Amount minus any amounts incurred prior to such time under the Fixed Incremental Amount pursuant to Section 7.1(k) or Section 7.1(r) plus (y) an additional amount so long as, after giving pro forma effect to the incurrence of such Indebtedness, the First Lien Leverage Ratio does not exceed 4.00:1.00 calculated on a pro forma basis for the period of four consecutive fiscal quarters then most recently ended for which financial statements under Section 5.01(a) or Section 5.01(b), as applicable, have been delivered (assuming, in the case of each revolving facility, that the commitments are fully drawn and without netting the proceeds of any such Indebtedness to be incurred at the time of testing such pro forma compliance); provided, that, if the proceeds of such Incremental Facility will be applied to finance a Limited Condition Acquisition, compliance with the First Lien Leverage Ratio shall be determined in accordance with Section 1.7. Each Incremental Facility shall be in an aggregate principal amount that is not less than \$25,000,000 (provided that such amount may be less than \$25,000,000 if such amount represents all remaining availability under the limit set forth in the immediately preceding sentence).

(b) (i) Any Incremental Facility shall be ratably secured with the Loans, (ii) any Incremental Term Facility in the form of “Term A” loans (which includes that such Incremental Term Facility must be syndicated to commercial banks), shall not mature earlier than the Maturity Date (or, in the case of any Incremental Term Facility in the form of “Term B” loans, 91 days subsequent to the Maturity Date) nor have amortization of greater than 5% of the original principal amount of such Incremental Term Facility per year (except (x) with respect to any Incremental Term Facility to the extent required for such Incremental Term Facility to be tax fungible with (i.e., to be treated as part of the same issue as) a previously issued Incremental Term Facility in accordance with Treasury Regulation 1.1275-2(k) and (y) for any periods after the Maturity Date); (iii) the Applicable Margin, Applicable Percentage and the other terms and conditions applicable to any Incremental Revolving Facility shall be the same as those applicable to the Revolving Facility, (iv) the Applicable Margin relating to any Incremental Term Facility shall be determined by the Borrower and the Lenders providing such Incremental Term Facility and (v) any Incremental Term Facility shall otherwise be on terms and pursuant to documentation to be determined by the Borrower and the Persons willing to provide such Incremental Term Facility; provided that to the extent such terms and documentation are not consistent with the then existing Facilities (other than with respect to pricing, amortization and maturity) they shall be reasonably satisfactory to the Administrative Agent and if more favorable to the Lender under such Incremental Facilities, shall be added for the benefit of the Lenders under the then existing Facilities other than in respect of terms applicable only to periods after the Maturity Date (it being agreed that Incremental Term Facilities may contain customary mandatory prepayments, voting rights and prepayment premiums without a corresponding change to any then existing Facilities). Each notice from the Borrower pursuant to this Section 2.23 shall set forth the requested amount and proposed terms of the relevant Incremental Facility and the Lenders or other Persons willing to provide the Incremental Facility. The Incremental Facility may be provided by any existing Lender or by any Eligible Assignee selected by the Borrower (any such other financial institution or fund being called an “Additional Lender”); provided that the Administrative Agent, the Swingline Lender, and the Issuing Banks shall have consented (not to be unreasonably withheld) to such Additional Lender’s providing such Incremental Facility if such

consent would be required under Section 10.4 for an assignment of Loans to such Additional Lender. Commitments in respect of Incremental Facilities shall become Commitments under this Agreement pursuant to an amendment (an “Incremental Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender agreeing to provide such Commitment, if any, each Additional Lender, if any, and the Administrative Agent pursuant to Section 10.2(b) hereof. The Incremental Amendment may, without need for the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.23. The effectiveness of any Incremental Amendment shall be subject to the satisfaction on the date thereof (each, an “Incremental Facility Closing Date”) of each of the conditions set forth in Section 3.2 (it being understood that all references to the date of a Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit or similar language in such Section 3.2 shall be deemed to refer to the effective date of such Incremental Amendment) and such other conditions, if any, as the parties thereto shall agree; provided, however, that for an Incremental Term Facility that is requested in connection with the financing of a Limited Condition Acquisition, the effectiveness of any Incremental Amendment shall be subject to the satisfaction on the date thereof of only such conditions precedent as the parties thereto shall agree. The Borrower will use the proceeds of the Incremental Facilities for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Facility, unless it so agrees. The Administrative Agent and the Lenders hereby agree that, other than with respect to any Incremental Revolving Facility, 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 this paragraph. Additionally, after giving effect to any Incremental Revolving Facility, each Lender’s and each Additional Lender’s, if any, Pro Rata Share of each of the Revolving Commitments and the Revolving Loans shall equal such Lender’s and such Additional Lender’s Pro Rata Share of the Aggregate Revolving Commitments after giving effect to such Incremental Revolving Facility; provided further, that in furtherance of the foregoing and on the Incremental Facility Closing Date, each Lender and each Additional Lender, if any, shall be deemed to have irrevocably sold, transferred, conveyed and assigned to each other Lender and each other Additional Lender, if any (and without, for the avoidance of doubt, increasing or decreasing the aggregate Commitments of such Lender or such Additional Lender after giving effect to such Incremental Revolving Facility), such portion of its Revolving Commitments and Revolving Loans such that, after giving effect to such assignment, each Lender and each Additional Lender, if any, shall hold a Pro Rata Share of each of the Revolving Commitments and Revolving Loans equal to such Lender’s or such Additional Lender’s Pro Rata Share of the Aggregate Revolving Commitments.

Section 2.24 **Mitigation of Obligations**. If any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.20, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable under Section 2.18 or Section 2.20, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with such designation or assignment.

Section 2.25 **Replacement of Lenders**. If (a) any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.20, (b) any Lender is a Defaulting Lender, (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.2(b), the consent of Required Lenders shall have been obtained but the consent of one or more of such other Lenders (each a “Non-Consenting Lender”) whose consent is required shall not have been obtained, (d) any Lender does not accept an Extension Offer, or (e) any Lender under a Refinanced Facility does not participate in the applicable Replacement Facility, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions set forth in Section 10.4(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.18 or 2.20, as applicable) and obligations

under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender) (a “Replacement Lender”); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of all Loans owed to it, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (in the case of such outstanding principal and accrued interest) and from the Borrower (in the case of all other amounts), (iii) in the case of a claim for compensation under Section 2.18 or payments required to be made pursuant to Section 2.20, such assignment will result in a reduction in such compensation or payments, and (iv) in the case of a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such terminated Lender was a Non-Consenting Lender. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.26 **Defaulting Lenders.**

(a) **Cash Collateral.**

(i) At any time that there shall exist a Defaulting Lender, within two Business Days following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize each Issuing Bank’s LC Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.26(b)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than 105% of the Dollar Equivalent of such Issuing Bank’s LC Exposure with respect to such Defaulting Lender.

(ii) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the applicable Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders’ obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (iii) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the applicable Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than the minimum amount required pursuant to clause (i) above, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(iii) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.26(a) or Section 2.26(b) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender’s obligation to fund participations in respect of Letters of Credit or LC Disbursements (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iv) Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank’s LC Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.26(a) following (i) the elimination of the applicable LC Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and the applicable Issuing Bank that there exists excess Cash Collateral; provided that, subject to Section 2.26(b) through (d) the Person providing Cash Collateral and each Issuing Bank may agree that Cash Collateral shall be held to support future anticipated LC Exposure or other obligations and provided further that to the extent that such Cash Collateral was

provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

(b) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and in Section 10.2.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.7 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to each Issuing Bank or Swingline Lender hereunder; third, to Cash Collateralize each Issuing Bank's LC Exposure with respect to such Defaulting Lender in accordance with Section 2.26(a); fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the applicable Issuing Banks' future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.26(a); sixth, to the payment of any amounts owing to the Lenders, any Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the applicable Issuing Bank or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 3.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Disbursements and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to sub-section (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.26(b)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) (A) No Defaulting Lender shall be entitled to receive any commitment Fee pursuant to Section 2.14(b) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(A) Each Defaulting Lender shall be entitled to receive letter of credit fees pursuant to Section 2.14(c) for any period during which that Lender is a Defaulting Lender only to the extent allocable to that portion of its LC Exposure for which it has provided Cash Collateral pursuant to Section 2.26(a).

(B) With respect to any commitment fee or letter of credit fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Bank and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the applicable Issuing Bank's LC Exposure or Swingline Lender's Swingline Exposure with respect to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) All or any part of such Defaulting Lender's participation in Letters of Credit and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares of the Revolving Commitments (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in Section 3.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the Dollar Equivalent of the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.18, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Swingline Exposure with respect to such Defaulting Lender and (y) second, Cash Collateralize the applicable Issuing Banks' LC Exposure with respect to such Defaulting Lender in accordance with the procedures set forth in Section 2.26(a).

(c) Defaulting Lender Cure. If the Borrower, the Administrative Agent, Swingline Lender and Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to Section 2.26(b) (iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(d) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Swingline Exposure after giving effect to such Swingline Loan and (ii) no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no LC Exposure after giving effect thereto.

Section 2.27 **Extension Offers**.

(a) The Borrower may, on one or more occasions, by written notice to the Administrative Agent, make one or more offers (each, an “Extension Offer”) to all the Lenders of one or more Facilities (each Facility subject to such an Extension Offer, an “Extension Request Facility”), in each case to extend the final maturity date of such Lenders’ respective Loans and commitments under such Facility to a later maturity date and to make one or more other Extension Permitted Amendments pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower. Such Extension Offer shall set forth the terms and conditions of the requested Extension Permitted Amendments, the date on which the Extension Agreement (as defined below) is requested to become effective (which date shall be acceptable to the Administrative Agent) and such other principal terms on which the Borrower proposes to enter into the Extension Agreement. Extension Permitted Amendments shall become effective only with respect to the Loans and commitments of the Lenders of the Extension Request Facility that accept the applicable Extension Offer (such Lenders, the “Accepting Lenders”) and, in the case of any Accepting Lender, only with respect to such Lender’s Loans and commitments of such Extension Request Facility. No Lender shall have any obligation to accept any such Extension Offer.

(b) The Borrower, each Accepting Lender and the Administrative Agent shall execute and deliver an amendment agreement (the “Extension Agreement”) and such other documentation as the Administrative Agent shall reasonably specify to evidence the Extension Permitted Amendments and the terms and conditions thereof and such amendment will be effective to amend this Agreement and the other Loan Documents on the terms set forth therein without need for the consent of any other Lender; provided that no Extension Agreement may alter the rights of any Lender (other than the applicable Accepting Lenders) in any manner that would not be permitted under Section 10.2 without the consent of such Lender unless such consent shall have been obtained. The effectiveness of any Extension Agreement shall be subject to such conditions precedent as the parties thereto shall agree. 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 this paragraph.

(c) The Administrative Agent shall promptly notify each Lender as to the effectiveness of an Extension Agreement. Each Extension Agreement may, without the consent of any Lender other than the applicable Accepting Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to give effect to the provisions of this Section, including any amendments necessary to treat the applicable Loans and/or commitments of the Accepting Lenders as a new “Facility” of loans and/or commitments hereunder; provided that, in the case of any Extension Offer relating to Revolving Commitments or Revolving Loans, except as otherwise agreed to by any Issuing Bank and the Swingline Lender, (i) the allocation of the participation exposure with respect to any then-existing or subsequently issued or made Letter of Credit or Swingline Loan under the applicable Facility as between the commitments of such new “Facility” and the remaining Revolving Commitments under the applicable Facility shall be made on a ratable basis as between the commitments of such new “Facility” and the remaining Revolving Commitments under such Facility and (ii) the Availability Period and the Maturity Date, as such terms are used in reference to Letters of Credit or Swingline Loans, may not be extended without the prior written consent of each Issuing Bank and Swingline Lender, as applicable.

Section 2.28 **Judgment Currency**. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due from the Borrower hereunder in the currency expressed to be payable herein (the “specified currency”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such

other currency at the Administrative Agent's main Atlanta office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of the Borrower in respect of any sum due to the Administrative Agent, any Issuing Bank or any Lender hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent, such Issuing Bank or such Lender of any sum adjudged to be so due in such other currency the Administrative Agent, such Issuing Bank or such Lender may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to the Administrative Agent, such Issuing Bank or such Lender in the specified currency, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, such Issuing Bank or such Lender against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to the Administrative Agent, any Issuing Bank or any Lender in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.21, the Administrative Agent, such Issuing Bank or such Lender agrees to remit such excess to the Borrower.

### **Article III.**

#### **CONDITIONS PRECEDENT TO LOANS AND LETTERS OF CREDIT.**

Section 3.1 **Conditions to Effectiveness.** The obligations of the Lenders (including the Swingline Lender) to make Loans and the obligation of the Issuing Banks to issue any Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.2):

(a) The Administrative Agent shall have received payment of all fees payable on or prior to the Closing Date and, to the extent invoiced at least one Business Day prior to the Closing Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses of the Administrative Agent (including reasonable fees, charges and disbursements of counsel to the Administrative Agent) required to be reimbursed or paid by the Borrower hereunder, under any other Loan Document and under any agreement with the Administrative Agents.

(b) The Administrative Agent (or its counsel) shall have received the following, each to be in form and substance satisfactory to the Administrative Agent:

(i) a counterpart of this Agreement signed by or on behalf of each party hereto or written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement;

(ii) a certificate of the Secretary, Assistant Secretary, or other Responsible Officer of each Loan Party, attaching and certifying as to, and as applicable: (A) copies of the articles or certificate of incorporation, certificate of organization or limited partnership, or other registered organizational documents of each Loan Party, certified as of a recent date by the Secretary of State of the jurisdiction of organization of such Loan Party, (B) copies of its bylaws, partnership agreement, limited liability company agreement, or similar organizational document, (C) the resolutions of its board of directors or other equivalent governing body, or comparable organizational authorizations, authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (D) the name, title and true signature of each officer of such Loan Party executing the Loan Documents to which it is a party, and (E) certificates of good standing from the Secretary of State of the jurisdiction of organization of such Loan Party;

(iii) a favorable written opinion of Cooley LLP, counsel to the Loan Parties, addressed to the Administrative Agent, each of the Issuing Banks and each of

the Lenders, and covering such matters relating to the Loan Parties, the Loan Documents and the transactions contemplated therein as the Administrative Agent shall reasonably request;

(iv) a certificate dated the Closing Date and signed by a Responsible Officer, certifying that after giving effect to the funding of any initial Revolving Borrowing, (x) no Default or Event of Default exist, (y) all representations and warranties of each Loan Party set forth in the Loan Documents are true and correct in all material respects and (z) the Borrower is in pro forma compliance with each of the financial covenants set forth in Article VI;

(v) [reserved];

(vi) a duly executed Notice of Borrowing for any initial Revolving Borrowing;

(vii) if applicable, a duly executed funds disbursement letter, together with a report setting forth the sources and uses of the proceeds hereof;

(viii) a certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming that the Borrower and its Subsidiaries on a consolidated basis are Solvent after giving effect to the funding of any initial Revolving Borrowing and the consummation of the transactions contemplated to occur on the Closing Date;

(ix) the Guarantee and Collateral Agreement, duly executed by the Borrower and each of the Guarantors, together with (A) UCC financing statements, stock certificates and related stock powers, promissory notes (if any) and other applicable documents under the laws of all necessary or appropriate jurisdictions with respect to the perfection of the Liens granted under the Guarantee and Collateral Agreement, as requested by the Administrative Agent in order to perfect such Liens, duly authorized by the Loan Parties, (B) copies of favorable UCC, tax, and judgment lien search reports in all necessary or appropriate jurisdictions and under all legal and trade names of the Loan Parties, as requested by the Administrative Agent, indicating that there are no prior Liens on any of the Collateral other than Liens permitted hereunder, (C) that certain perfection certificate, duly completed and executed by the Loan Parties, and (D) duly executed Patent Security Agreements, Trademark Security Agreements and Copyright Security Agreements; and

(x) at least three (3) days prior to the date of this Agreement, all documentation and other information required by bank regulatory authorities or reasonably requested by the Administrative Agent or any Lender under or in respect of applicable “know your customer” and anti-money laundering Requirements of Law, including the Patriot Act and, if Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to Borrower.

Without limiting the generality of the provisions of this Section, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved of, accepted or been satisfied with each document or other matter required thereunder to be consented to, 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 3.2 **Conditions to Each Credit Event.** The obligation of each Lender to make a Loan on the occasion of any Revolving Borrowing and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit is subject to Section 2.26(d), as applicable, and the satisfaction of the following conditions:



(a) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall exist;

(b) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, all representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (other than those representations and warranties that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects);

(c) the Borrower shall have delivered the required Notice of Borrowing; and

(d) with respect to each issuance, amendment, renewal or extension of any Letter of Credit to be denominated in an Alternative Currency, such currency remains an Eligible Currency.

Each Revolving Borrowing and each issuance, amendment, renewal or extension of any Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in subsections (a) and (b) of this Section; provided, however, the application of clauses (a) and (b) hereto to any loan under any Incremental Term Facility made in connection with any Limited Condition Transaction shall, at the Borrower's option, be subject to Section 1.7.

Section 3.3 **Delivery of Documents**. All of the Loan Documents, certificates, legal opinions and other documents and papers referred to in this Article, unless otherwise specified, shall be delivered to the Administrative Agent for the account of each of the Lenders.

#### Article IV.

### **REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Administrative Agent, each Lender and each Issuing Bank as follows:

Section 4.1 **No Change**. Since December 31, 2019, there has been no development or event that has had a Material Adverse Effect.

Section 4.2 **Existence; Compliance With Law**. Each Group Member (a) is duly organized or formed, validly existing and in good standing (in the case of Foreign Subsidiaries, solely to the extent such concepts, or the functional equivalent thereof, apply) under the laws of the jurisdiction of its organization or formation thereof, (b) has (i) all power and authority and (ii) all governmental licenses, authorizations consents and approvals, in each case, to own or lease its assets and carry on its business in which it is currently engaged, (c) is duly qualified and is licensed and, as applicable, in good standing (in the case of Foreign Subsidiaries, solely to the extent such concepts, or the functional equivalent thereof, apply) under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license and (d) is in compliance with all Requirements of Law, except in the case of (b)(ii), (c) and (d) when the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 4.3 **Power; Authorization; Enforceable Obligations**. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents except (i) consents, authorizations, filings and notices

described on Schedule 4.3, which consents, authorizations, filings and notices have been obtained or made and are in full force and effect, (ii) the filings referred to in Section 4.20, (iii) filings required under the Exchange Act in respect of the transactions contemplated hereby, and (iv) consents, authorizations, filings and notices required under the laws of the jurisdiction of organization of any Foreign Subsidiary in respect of the grant of a security interest in respect of its Capital Stock pursuant to the Guarantee and Collateral Agreement or any other Security Document. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

Section 4.4 **No Legal Bar.** The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate (a) any Loan Party's organizational documents or (b) any Requirement of Law or any material Contractual Obligation of any Loan Party, except, in the case of this clause (b), for violations that would not reasonably be expected to have a Material Adverse Effect, and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Loan Documents).

Section 4.5 **Litigation.** There are no actions, suits, proceedings, claims, disputes or investigations of or before any Governmental Authority, pending or, to the knowledge of any Group Member, threatened in writing, at law or in equity, by or against the Borrower or any Restricted Subsidiary or against any of their properties or revenues that (a) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (b) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby.

Section 4.6 **No Default.** No Group Member is in default under or with respect to any Contractual Obligation that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

Section 4.7 **Ownership of Property; Liens.** Except in each case as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Group Member has title in fee simple to, or a valid leasehold, subleasehold, license or other interest in, all its real property, and good title to, or a valid leasehold interest in, all its other property, and none of such property, except for minor encumbrances and defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes is subject to any Lien except as permitted by Section 7.2.

Section 4.8 **Intellectual Property.** Except as would not reasonably be expected to have a Material Adverse Effect: each Group Member owns, or is licensed to use, all Intellectual Property used in, held for use in or necessary for the conduct of its business as currently conducted; no claim has been asserted and is pending or, to the knowledge of the Borrower, is threatened in writing by any Person against any Group Member challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property of any Group Member, nor does the Borrower know of any valid basis for any such claim; and to the knowledge of the Borrower, none of the Group Members are infringing on, misappropriating or otherwise violating the Intellectual Property of any Person. Except as would not reasonably be expected to have a Material Adverse Effect, all necessary registration, maintenance, renewal and other relevant filing fees in connection with any of the Intellectual Property that is the subject of a registration or an application for registration have been timely paid, and all necessary documents, certificates and filings in connection with the Intellectual Property have been timely filed with the relevant Governmental Authority and internet domain name registrar(s) for the purpose of maintaining such Intellectual Property and all registrations and applications therefor.

Section 4.9 **Taxes.** Each Group Member has filed or caused to be filed all Federal and material state and other material Tax returns that are required to be filed and has paid all Taxes shown to

be due and payable on said returns or on any material assessments made against it or any of its property and all other material Taxes imposed on it or any of its property by any Governmental Authority, except to the extent (a) the amount or validity of any such Taxes are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP (where GAAP requires such reserves) have been provided on the books of the relevant Group Member or (b) the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 4.10 **Margin Regulations.** No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used (a) for “buying” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect for any purpose that violates the provisions of the Regulations of the Board of Governors of the Federal Reserve System or (b) for any purpose that violates the provisions of the Regulations of the Board of Governors of the Federal Reserve System. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying “margin stock”.

Section 4.11 **Labor Matters.** Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been, in all material respects, paid or accrued as a liability on the books of the relevant Group Member.

Section 4.12 **ERISA.** Except, in the aggregate, as would not reasonably be expected to result in a Material Adverse Effect, (a) each Loan Party and each of their respective ERISA Affiliates is in compliance with the applicable provisions of ERISA and the Code relating to Single Employer Plans and Multiemployer Plans and the regulations and published interpretations thereunder and (b) no ERISA Event has occurred.

Section 4.13 **Investment Company Act.** No Loan Party is an “investment company”, or a company “controlled by” an “investment company” as defined in the Investment Company Act of 1940.

Section 4.14 **Subsidiaries.** As of the date hereof, (a) Schedule 4.14 sets forth the name and jurisdiction of incorporation of each Subsidiary and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party and (b) except as set forth on Schedule 4.14, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options or similar equity awards granted to current or former employees or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of any Subsidiary.

Section 4.15 **Use of Proceeds.** The proceeds of the Loans shall be used for working capital and general corporate purposes, including to finance acquisitions and fund Restricted Payments.

Section 4.16 **Environmental Matters.** Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect:

(a) the facilities and properties owned, leased or operated by any Group Member (the “Properties”) do not contain, and to the knowledge of the Borrower, have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or constituted a violation by any Group Member of, or could give rise to liability of any Group Member under, any Environmental Law;

(b) no Group Member has received any written or, to the knowledge of the Borrower, oral notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with or liabilities under Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “Business”), nor does the Borrower have knowledge or reason to believe that any such notice is being threatened;

(c) Materials of Environmental Concern have not been transported or disposed of from the Properties by any Group Member or, to the knowledge of the Borrower, other Person, nor have any Materials of Environmental Concern been generated, treated, stored or disposed of at, on or under any of the Properties by any Group Member or, to the knowledge of the Borrower, other Person;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened, under any Environmental Law to which any Group Member is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding against any Group Member or, to the knowledge of the Borrower, other Person under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of any Group Member in connection with the Properties or otherwise in connection with the Business;

(f) the Group Members, and the Properties and all operations at the Properties are in compliance, and have in the last five years and, to the knowledge of the Borrower, at all prior times been in compliance, with all Environmental Laws, and there is no contamination at, under or about the Properties that could give rise to liability of any Group Member or violation of any Environmental Law with respect to the Properties or the Business; and

(g) no Group Member has assumed any liability by contract or, to the knowledge of the Borrower, operation of law, of any other Person under Environmental Laws.

Section 4.17 **Accuracy of Information, Etc.** No factual written statement or information contained in this Agreement, any other Loan Document or any other document or certificate furnished by or on behalf of any Group Member to the Administrative Agent, the Lenders, or any of them on or prior to the Closing Date, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents (other than, for the avoidance of doubt, any estimates, projections or pro forma information), when taken as a whole, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances when made. The projections and pro forma information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such projections as they relate to future events are subject to significant uncertainties, many of which are beyond the control of the Borrower and not to be viewed as fact or a guarantee of performance and that actual results during the period or periods covered by such projections may differ from the projected results set forth therein by a material amount.

Section 4.18 **Financial Statements.** The audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as of February 2, 2020 and the related statements of income and cash flow for the fiscal year ending on such date and the unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as of July 31, 2020 and the related statements of income and cash flow for the interim period ending on such date, as heretofore furnished to the Administrative Agent, are complete and correct in all material respects and fairly present in all material respects the financial condition of the Borrower and its Subsidiaries, on a consolidated basis, on such date (subject in the case of such unaudited statements to normal year-end audit adjustments). Such financial statements, including the related schedules and notes thereto, have been prepared in conformity with GAAP applied on a consistent basis (except (i) as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein and (ii) with respect to unaudited statements, the absence of footnote disclosure and subject to year-end audit adjustments), and all liabilities, direct and contingent, of the Borrower on a consolidated basis with its Subsidiaries on such date required to be disclosed pursuant to GAAP are disclosed in such financial statements.

Section 4.19 **Insurance.** All policies of insurance of any kind or nature owned by or issued to each Group Member, including policies of life, fire, theft, product liability, public liability, property

damage, other casualty, employee fidelity, workers' compensation, employee health and welfare, property and liability insurance, are (a) in full force and effect except to the extent commercially reasonably determined by the Borrower not to be necessary pursuant to clause (b) of this Section 4.19 or which are not material to the Group Member's overall coverage and (b) are of a nature and provide such coverage as in the reasonable opinion of the Borrower, is sufficient and is customarily carried by companies of the size and character of the Group Members.

**Section 4.20 Security Documents.**

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Guarantee and Collateral Agreement, when stock certificates representing such Pledged Stock are delivered to the Administrative Agent (together with a properly completed and signed stock power or endorsement), and in the case of the other Collateral described in the Guarantee and Collateral Agreement, when financing statements and other filings specified on Schedule 4.20(a) in appropriate form are filed in the offices specified on Schedule 4.20(a) together with payment of any filing or recordation fees, or, with respect to after-acquired property, when the requirements set forth in Section 5.9 have been complied with, the Administrative Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral (except for registration of and application for Intellectual Property filed outside the United States) to the extent such Lien can be perfected by the filing of financing statements under the applicable UCC, as security for the Obligations (as defined in the Guarantee and Collateral Agreement), in each case prior and superior in right to any other Person (except (x) in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.2 and (y) in the case of Collateral constituting Pledged Stock, inchoate Liens arising by operation of law), in each case, to the extent required by the Guarantee and Collateral Agreement.

(b) To the extent applicable, each of the Mortgages, if any, entered into pursuant to Section 5.9(d) is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the property described therein, and when the Mortgages are filed in the appropriate offices, each such Mortgage shall constitute a Lien on, and security interest in, all right, title and interest of the Loan Parties in the subject property, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person (except Liens permitted by Section 7.2).

**Section 4.21 Solvency.** After giving effect to the occurrence of the Closing Date and the incurrence of all Indebtedness and Obligations being incurred in connection herewith, the Borrower and its Subsidiaries on a consolidated basis are Solvent.

**Section 4.22 Sanctions and Anti-Corruption Laws.**

The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents (in their respective capacities as such) with Anti-Corruption Laws and applicable Sanctions, and the Borrower and its Subsidiaries and to the knowledge of the Borrower their respective directors, officers, employees and agents (in their respective capacities as such), are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower or any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any duly appointed agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person, in each case where such status as a Sanctioned Person would violate applicable Sanctions. No borrowing of any Loan or Letter of Credit or use by any Group Member thereof will violate Anti-Corruption Laws or applicable Sanctions.

**Section 4.23 Affected Financial Institutions.** Neither the Borrower nor any Subsidiary is an Affected Financial Institution.

## Article V.

### AFFIRMATIVE COVENANTS

Until the Termination Date, the Borrower covenants and agrees with the Lenders that, it shall and shall cause each of its Restricted Subsidiaries to:

Section 5.1 **Financial Statements**. Furnish to the Administrative Agent (who shall provide to each Lender):

(a) promptly after available, but in any event not later than 90 days after the end of each fiscal year of the Borrower (or, if applicable, any later date (not to exceed 120 days after the end of the applicable fiscal year of the Borrower) to which the SEC has extended the applicable deadline for the Borrower to file disclosure reports containing such financial statements), commencing with the fiscal year ending on or about January 31, 2021, a copy of the audited consolidated balance sheet of the Borrower and its Restricted Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case, in comparative form the figures for the previous year, reported on without a going concern qualification or qualification arising out of the scope of the audit, by independent certified public accountants of nationally recognized standing (except for any qualification pertaining to the maturity of any Indebtedness occurring within twelve (12) months of the date of the relevant audit); and

(b) promptly after available, but in any event not later than 45 days after the end of each of the first three quarterly periods of each fiscal year of the Borrower (or, if applicable, any later date (not to exceed 60 days after the end of the applicable fiscal quarter of the Borrower) to which the SEC has extended the applicable deadline for the Borrower to file disclosure reports containing such financial statements), commencing with the fiscal quarter ended on or about July 31, 2020, the unaudited consolidated balance sheet of the Borrower and its Restricted Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case, in comparative form the figures for the previous year, certified by a Responsible Officer, on behalf of the Borrower, as being fairly stated in all material respects.

All such financial statements shall be prepared in reasonable detail and in accordance with GAAP applied (except (i) as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein and (ii) with respect to unaudited statements, the absence of footnote disclosure and subject to year-end audit adjustments) consistently throughout the periods reflected therein.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and each Issuing Bank materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on 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 (w) at the Administrative Agent's request, all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) 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 confidential information, they shall be treated as set forth in Section 10.12); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arrangers 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".

Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials “PUBLIC.”

Section 5.2 **Certificates; Other Information.** Furnish to the Administrative Agent which shall make such item available to each Lender (or, in the case of clauses (f) and (g), to the relevant Lender):

(a) concurrently with the delivery of any financial statements pursuant to Section 5.1(a) or (b), (i) a certificate of the Borrower stating that the Responsible Officer executing such certificate on behalf of the Borrower has no knowledge of any Default or Event of Default except as specified in such certificate, (ii) commencing with the quarter ending January 31, 2021, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Borrower with Article VI, including supporting calculations in reasonable detail, (iii) a in the case of quarterly or annual financial statements, to the extent not previously disclosed to the Administrative Agent, (1) a description of any change in the jurisdiction of organization of any Loan Party, (2) a description of any Domestic Subsidiary acquired or created, including name and jurisdiction of organization, (3) a description of any Person that has become a Loan Party, in each case since the date of the most recent report delivered pursuant to this clause (iii) (or, in the case of the first such report so delivered, since the Closing Date) and (4) notice of any amount in excess of \$2,000,000 payable under or in connection with any of the Collateral being evidenced by any Instrument, Certificated Security or Chattel Paper (each as defined in the Guarantee and Collateral Agreement), (iv) a (A) a summary of the pro forma adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such financial statements, (B) a list identifying each subsidiary of the Borrower as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate or 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 (C) a list identifying each subsidiary of the Borrower which is an Immaterial Subsidiary and certifying that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (b) of the definition of the term “Immaterial Subsidiary”, and (v) a stating whether any change in GAAP or the application thereof has occurred since the date of the mostly recently delivered audited financial statements of the Borrower and its Restricted Subsidiaries, and, if any change has occurred, specifying the effect of such change on the financial statements accompanying such Compliance Certificate;

(b) concurrently with the delivery of any financial statements pursuant to Section 5.1, management’s discussion and analysis of the financial condition and results of operations of the Borrower and its Restricted Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter;

(c) within five Business Days after the same are filed, copies of all financial statements and reports that the Borrower makes to, or files with, the SEC including any press release providing earnings guidance;

(d) to the Administrative Agent on behalf of each Lender promptly following receipt thereof, copies of any documents described in Sections 101(k) or 101(l) of ERISA that, following reasonable request of the Administrative Agent (which right to request shall be exercised no more than once during a 12-month period), any Loan Party or any ERISA Affiliate shall have promptly requested from the administrator or sponsor of a Multiemployer Plan with respect to such Multiemployer Plan;

(e) promptly after the furnishing thereof, copies of any notice of default delivered by the Borrower or any Subsidiary in respect of any Indebtedness having an aggregate outstanding principal amount of \$20,000,000 or more;

(f) promptly, subject to applicable confidentiality agreements of the Group Members (which confidentiality agreements shall not be entered into for the purpose of avoiding disclosure under this clause (f)) or Requirements of Law, such reasonably available additional information regarding the business, legal, financial or corporate affairs of the Group Members as any Lender through the Administrative Agent may from time to time reasonably request; and

(g) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender (including an updated Beneficial Ownership Certification if the Persons identified in a previously delivered Beneficial Ownership Certification have changed) 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, as applicable.

Documents required to be delivered pursuant to Section 5.1, Section 5.2 or Section 5.7 may be delivered electronically and if so delivered, shall be deemed to have been delivered to, and received by, the Administrative Agent and Lenders on the date (i) on which the Borrower posts such documents, or provides a link thereto, on the Borrower’s website on the Internet, (ii) on which such documents are posted on the Borrower’s behalf on Intralinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial or governmental third-party website or whether sponsored by the Administrative Agent) or (iii) on which the Borrower has filed such reports with the SEC via the EDGAR filing system; provided, that at the request of the Administrative Agent, the Borrower shall provide by electronic mail electronic versions (i.e., soft copies) of such documents.

**Section 5.3 Payment of Obligations.** Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations in respect of Taxes, assessments and governmental charges or levies of whatever nature, except (a) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP, or, in the case of Foreign Subsidiaries, with generally accepted accounting principles in effect from time to time in their respective jurisdiction of organization, with respect thereto have been provided on the books of the Borrower and its Restricted Subsidiaries, or (b) where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.4 Maintenance of Existence; Compliance with Laws.** (a) (i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 7.3 or Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; and (b) comply with all Requirements of Law except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

**Section 5.5 Maintenance of Property; Insurance.** (a) Keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted except as would not reasonably be expected to have a Material Adverse Effect, (b) maintain with financially sound and reputable insurance companies insurance on its material property in at least such amounts and against at least such risks (but including in any event public liability and product liability) as are usually insured against in the same general area by companies engaged in the same or a similar business, (c) take all reasonable and necessary steps, including, in any proceeding before the United States Patent and Trademark Office or the United States Copyright Office, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the Intellectual Property, including, filing of applications for renewal, affidavits of use and affidavits of incontestability, except in each case to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect and (d) if (x) any improved portion of any real property subject to a Mortgage is at any time located in a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Program and (y) the Administrative Agent shall have delivered notice(s) to the relevant Loan Party pursuant to applicable flood insurance laws and regulations stating that such mortgaged property is located a Special Flood Hazard Area with respect to which such flood insurance has been made available, then the Borrower shall, or shall cause such Loan Party to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the National Flood Insurance Program and naming the Administrative Agent as additional insured, mortgagee and lender loss payee, as applicable and (ii) deliver to the Administrative Agent and each Lender requesting the same evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent or such Lender, as the case may be.



**Section 5.6 Inspection of Property; Books and Records; Discussions.** (a) Keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit representatives of the Administrative Agent or any Lender through the Administrative Agent, in each case, subject to the limitations of reasonable confidentiality agreements not entered into for the purpose of avoiding obligations under this Section 5.6, to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time upon reasonable notice and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers and managerial employees of the Group Members and with their independent certified public accountants; provided that an officer of the Borrower shall be provided reasonable opportunity to participate in any such discussion with the accountants; provided further that such inspections shall be coordinated through the Administrative Agent so that in the absence of an Event of Default, not more than one such inspection shall occur in any calendar year. The Administrative Agent and the Lenders agree to use reasonable efforts to coordinate and manage the exercise of their rights under this Section 5.6 so as to minimize the disruption to the business of the Borrower and its Restricted Subsidiaries resulting therefrom.

**Section 5.7 Notices.** Upon a Responsible Officer learning of the same, promptly give notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) the filing or commencement of any litigation or proceeding against any Loan Party (i) in which the amount (excluding any amounts paid or covered by insurance as to which the relevant insurance company has not denied coverage) is \$20,000,000 or more, (ii) in which injunctive or similar relief is sought which would reasonably be expected to have a Material Adverse Effect or (iii) which relates to any Loan Document;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Event(s) that have occurred, has had or would reasonably be expected to have a Material Adverse Effect; and

(d) the occurrence of any Material Adverse Effect or any material adverse effect on the aggregate value of the Collateral or on the security interests created by the Security Documents.

Each notice pursuant to this Section 5.7 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Loan Party proposes to take with respect thereto.

**Section 5.8 Environmental Laws.** Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect:

(a) comply with, and take all commercially reasonable steps to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply with and maintain, and take all commercially reasonable steps to ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws; and

(b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws; provided, however, that no Loan Party shall be deemed in violation of this Section 5.8(b) if it promptly challenges any such order or directive and pursues such challenge or challenges, and the pendency of such challenges, in the aggregate could not reasonably be expected to have a Material Adverse Effect.

**Section 5.9 Additional Collateral, etc.**

(a) (1) With respect to any property acquired after the Closing Date by any Loan Party (other than (x) any real property or property described in paragraph (b) below, (y) any property constituting Excluded Property and (z) any property with respect to which the Administrative Agent determines that the cost or burden of subjecting such property to a Lien under the Security Documents is disproportionate to the value of the collateral security afforded thereby) or (2) upon the designation of any Unrestricted Subsidiary that is a Domestic Subsidiary as a Restricted Subsidiary (which is not an Excluded Subsidiary), as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien, promptly upon request by the Administrative Agent (i) execute and deliver to the Administrative Agent such amendments to the Security Documents or such other documents as the Administrative Agent reasonably deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (subject to (x) in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.2 and (y) in the case of Collateral constituting Pledged Stock, inchoate Liens arising by operation of law and subject to Section 5.9(b)) security interest under the laws of the United States in such property, including the filing of Uniform Commercial Code financing statements in such domestic jurisdictions as may be required by the Security Documents or by law or as may be reasonably requested by the Administrative Agent.

(b) Promptly (and in any event not later than 45 days after the delivery of any financial statements under Section 5.1(a) or 5.1(b)), with respect to Capital Stock of any Subsidiary included in such financial statements, which period may be extended by the Administrative Agent from time to time in its discretion), cause all of the Capital Stock (other than Excluded Property) owned by any Loan Party to be pledged to the Administrative Agent and together therewith, (x) the original certificates evidencing such pledged Capital Stock to be delivered to the Administrative Agent, together with appropriate powers executed in blank and (y) if and to the extent reasonably requested by the Administrative Agent, the Administrative Agent to receive legal opinions of counsel to the Borrower reasonably acceptable to the Administrative Agent covering such matters in respect of such pledges as the Administrative Agent so requests.

(c) Promptly (and in no event (x) in the case of (i) a Domestic Subsidiary is formed after the Closing Date, (ii) the designation of any Unrestricted Subsidiary that is a Domestic Subsidiary as a Restricted Subsidiary, (iii) any Restricted Subsidiary that is a Domestic Subsidiary ceasing to be an Immaterial Subsidiary or (iv) any Restricted Subsidiary that is a Domestic Subsidiary ceasing to be an Excluded Subsidiary, no later than 45 days after the delivery of any financial statements under Section 5.1(a) or 5.1(b)), with respect to any Subsidiary included in such financial statements and (y) in the case of any Restricted Subsidiary that is a Domestic Subsidiary acquired after the Closing Date, 45 days from the date of such acquisition, in each case, which period may be extended by the Administrative Agent from time to time in its discretion), cause (i) each of the Borrower's direct or indirect Domestic Subsidiaries (other than an Excluded Subsidiary), to become a Guarantor and Grantor (as defined in the Guarantee and Collateral Agreement) by executing and delivering a joinder or assumption agreement to the Guarantee and Collateral Agreement in a form reasonably requested by the Administrative Agent if such Subsidiary is not then a Guarantor, (ii) to be delivered to the Administrative Agent a certificate of a Responsible Officer of such Subsidiary, attaching and certifying as to, and as applicable: (w) its articles or certificate of incorporation, certificate of organization or limited partnership, or other registered organizational documents, certified as of a recent date to the delivery thereof by the Secretary of State of the jurisdiction of organization of such Subsidiary, (x) its bylaws, partnership agreement, limited liability company agreement, or similar organizational document, (y) resolutions of its board of directors or other equivalent governing body and authorizations authorizing the execution, delivery and performance of the Loan Documents to which it is a party and certifying the name, title and true signature of each officer of such Subsidiary executing the Loan Documents to which it is a party, and (z) certificates of good standing or existence, as may be available from the Secretary of State of the jurisdiction of organization of such Subsidiary, and (iii) if and to the extent reasonably requested by the Administrative Agent, to be delivered to the Administrative Agent opinions of counsel to the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, covering such matters in respect of such new Guarantor and Grantor as the Administrative Agent so requests.

(d) With respect to any fee simple interest in any real property having a fair market value (together with improvements thereof), as of the date of acquisition, in the good faith estimation of the Borrower of at least \$10,000,000 acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.2(g) so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of any other Lien on such real property), promptly and in any event within 90 days after such acquisition (or such later times as the Administrative Agent may agree in its sole discretion), (i) execute and deliver a Mortgage, in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, creating a Lien on such real property prior and superior in right to all other Liens on such real property (except Liens permitted by Section 7.2), (ii) if reasonably requested by the Administrative Agent, provide the Administrative Agent, for the benefit of the Secured Parties, with (1) title searches in respect of such real property as well as a current map or plat of an as-built survey thereof, together with a surveyor's certificate, (2) title insurance policies reasonably satisfactory in form and substance to the Administrative Agent, (3) recently prepared environmental site assessment reports, in each case together with letters executed by the environmental firms preparing such environmental reports, in form and substance satisfactory to the Administrative Agent, authorizing the Administrative Agent and the Lenders to rely on such reports, and (4) any consents or estoppels reasonably deemed necessary by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent, (iii) deliver a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination and evidence of Federal Flood Insurance satisfying the requirements of Section 5.5 and (iv) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary in this Agreement or the Loan Documents, no Mortgage will encumber improved real property that is located in Special Flood Hazard Area in which flood insurance has been made available under the National Flood Insurance Act of 1968, except to the extent that the applicable Loan Party maintains flood insurance with respect to such improved real property in compliance with the requirements of Section 5.5. For purposes of this Section 5.9(d), with respect to any property owned by any Domestic Subsidiary at the time such Domestic Subsidiary is designated as a Restricted Subsidiary pursuant to the terms of this Agreement, such property shall be deemed to have been acquired by such Domestic Subsidiary on the first day of the time period within which such Domestic Subsidiary is required to become or has elected to become a Restricted Subsidiary pursuant to the terms of this Agreement.

(e) If at any time (x) a Foreign Subsidiary or a U.S. Pass Through Foreign Holdco owned directly by a Loan Party shall as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been (or were required to be) delivered pursuant to Section 5.1(a) or Section 5.1(b), have assets with a value in excess of 5.0% of the Consolidated Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis as of as of such date or (y) a Loan Party shall acquire a Foreign Subsidiary or a U.S. Pass Through Foreign Holdco that meets the description in clause (x) if such Subsidiary had been a Subsidiary at the time of such financial statements, then in each case within 60 days thereafter (or such later date as the Administrative Agent may agree) the Borrower will take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (subject to inchoate Liens arising by operation of law) security interest in the Capital Stock of such Foreign Subsidiary or U.S. Pass Through Foreign Holdco (other than Excluded Property), as applicable, under the laws of its jurisdiction of formation, and shall deliver customary legal opinions of counsel in such jurisdiction to confirm such security interest.

(f) Without limiting the foregoing, the Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions, which may be required under any applicable law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents. Notwithstanding the foregoing, anything in

this Agreement or any other Loan Document to the contrary, no Loan Party will be required to deliver control agreements with respect to the Collateral or to take any action necessary under the laws of any foreign jurisdiction to create or perfect a Lien or, in each case, be considered in breach of or non-compliance with any representation or warranty or covenant herein or in any Loan Document as a result thereof.

Section 5.10 **Designation of Subsidiaries.** The board of directors (or equivalent governing body) of the Borrower may at any time after the Closing Date designate (or redesignate) any Subsidiary (or in connection with any contemplated Investment, a Person that upon such Investment and but for designation as an Unrestricted Subsidiary would be a Restricted Subsidiary) as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing (including after giving effect to the reclassification of Investments in, Indebtedness of and Liens on the assets of, the applicable Restricted Subsidiary or Unrestricted Subsidiary), (ii) the Borrower shall be in pro forma compliance, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for the purposes of testing such pro forma compliance, with Article VI hereof, (iii) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any Capital Stock in any Restricted Subsidiary of the Borrower or hold any Indebtedness of or any Lien on any property of the Borrower or its Restricted Subsidiaries, (iv) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any item of material Intellectual Property unless such Intellectual Property is no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and the Restricted Subsidiaries, as determined in the exercise of the Borrower's or the applicable Restricted Subsidiary's reasonable business judgment and (v) as of the date of designation thereof, the aggregate value of the assets of all Subsidiaries that have been designated as unrestricted under this Agreement since the Closing Date, together with all Investments in Unrestricted Subsidiaries made since the Closing Date (regardless of the provision of this Agreement pursuant to which such Investments were made) shall not exceed \$100,000,000. The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower (or its applicable Restricted Subsidiary) therein at the date of designation in an amount equal to the portion of the fair market value of the net assets of such Restricted Subsidiary attributable to the Borrower's (or its applicable Restricted Subsidiary's) equity interest therein as reasonably estimated by the Borrower (and such designation shall only be permitted to the extent such Investment is permitted under Section 7.6). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the making, incurrence or granting, as applicable, of Investments of such Subsidiary, Indebtedness of such Subsidiary, and Liens on the assets of such Subsidiary existing at such time; provided that upon any re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have an Investment in the resulting Restricted Subsidiary in an amount (if positive) equal to (a) the Borrower's "Investment" in such Restricted Subsidiary at the time of such re-designation, less (b) the portion of the fair market value of the net assets of such Restricted Subsidiary attributable to the Borrower's equity therein at the time of such re-designation.

Section 5.11 **Anti-Corruption Laws and Sanctions.** Maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents (in their respective capacities as such) with Anti-Corruption Laws and applicable Sanctions.

Section 5.12 **Margin Regulations.** Not to use any of the proceeds of any Loans or any other extensions of credit hereunder (a) for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect for any purpose that violates the provisions of the Regulations of the Board of Governors of the Federal Reserve System or (b) for any purpose that violates the provisions of the Regulations of the Board of Governors of the Federal Reserve System.

Section 5.13 **Post-Closing Obligations.** The Borrower shall deliver, or cause to be delivered, the agreements, instruments and other documents set forth on Schedule 5.13 within the applicable time periods specified therein or in each case, such later date as may be agreed by the Administrative Agent in its sole discretion.

## Article VI.

### FINANCIAL COVENANTS

Until the Commitments have expired or been terminated and all Obligations have been paid in full (other than contingent obligations as to which no claim has been made by the Person entitled thereto) and all Letters of Credit shall have expired or terminated, in each case without any pending draw, or all such Letters of Credit shall have been cash collateralized to the satisfaction of the applicable Issuing Banks, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that, it shall not, and shall not permit any of its Restricted Subsidiaries to:

Section 6.1 **Consolidated Leverage Ratio.** Commencing with the fiscal quarter ending January 31, 2021, permit, on the last day of any fiscal quarter, the Consolidated Leverage Ratio for the four consecutive fiscal quarters of the Borrower ending with such fiscal quarter end date to exceed 4.50:1.00.

Section 6.2 **Interest Coverage Ratio.** Permit, on the last day of any fiscal quarter beginning with the fiscal quarter ending January 31, 2021, the Interest Coverage Ratio for the four consecutive fiscal quarters of the Borrower ending with such fiscal quarter end date to be less than 3.00:1.00.

## Article VII.

### NEGATIVE COVENANTS

Until the Termination Date, the Borrower covenants and agrees with the Lenders that, it shall not, and shall not permit any of its Restricted Subsidiaries to:

Section 7.1 **Indebtedness.** Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness thereof, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document;

(b) intercompany Indebtedness among the Borrower and its Restricted Subsidiaries incurred pursuant to any Investment permitted by Section 7.6(f), (l), (m), or (o); provided that Indebtedness owed by a Loan Party to a Restricted Subsidiary that is not a Loan Party shall be subordinated to the Obligations.

(c) Guarantee Obligations incurred in the ordinary course of business or with respect to Indebtedness permitted pursuant to this Agreement;

(d) Indebtedness outstanding on the Closing Date and listed on Schedule 7.1(d);

(e) Indebtedness (including Capital Lease Obligations) secured by Liens permitted by Section 7.2(g) in an aggregate outstanding principal amount not to exceed at any time the greater of (x) \$50,000,000 and (y) 30% of the Consolidated Assets determined as of the last day of the most recent fiscal period for which financial statements have been delivered hereunder prior to the incurrence thereof;

(f) Indebtedness of the Borrower or any Restricted Subsidiaries in respect of workers' compensation claims, self-insurance obligations, customs, appeal, performance, bid and surety bonds and completion guaranties, deferred insurance premiums, and similar obligations, in each case in the ordinary course of business;

(g) Indebtedness of the Borrower or any Restricted Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by the Borrower or such Restricted Subsidiary in the ordinary course of business against insufficient funds, so long as such Indebtedness is promptly repaid;

(h) letters of credit issued for the account of the Borrower or any Restricted Subsidiaries, so long as such letters of credit are secured by Liens permitted under Section 7.2(s);

(i) Indebtedness of a joint venture as long as such Indebtedness is non-recourse to the Borrower or any other Restricted Subsidiary of the Borrower (other than a Restricted Subsidiary the sole assets of which are the equity interests in one or more joint ventures); provided that notwithstanding the foregoing joint ventures may create, incur or assume Indebtedness with recourse to the Borrower or any other Restricted Subsidiary of the Borrower not to exceed the greater of (x) \$25,000,000 and (y) 15% of Consolidated EBITDA of the Borrower for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered hereunder prior thereto;

(j) Indebtedness incurred by any Foreign Subsidiary in an aggregate outstanding principal amount for all such Foreign Subsidiaries at the close of business on any day not to exceed the greater of (x) \$25,000,000 and (y) 15% of Consolidated EBITDA of the Borrower for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered hereunder prior thereto;

(k) Indebtedness of the Borrower or any Loan Party secured by Liens on the Collateral permitted under Section 7.2(u) that are junior to the Liens on the Collateral securing the Obligations and containing, in the good faith judgment of the Borrower, then current market terms and conditions for similarly situated companies (but which terms and conditions shall not directly and explicitly restrict the ability of the Group Members to perform their obligations under the Loan Documents in any material respect or the ability of the Borrower to repay the Loans); provided that (i) no Event of Default exists or would result from the incurrence thereof, (ii) immediately after giving effect to the incurrence of any such Indebtedness and the use of proceeds thereof (without netting the cash proceeds thereof) (x) the Borrower shall be in pro forma compliance, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for the purpose of testing such pro forma compliance, with each of the financial covenants set forth in Article VI and (y) the aggregate initial principal amount of all such Indebtedness (together with the initial principal amount of all Indebtedness incurred pursuant to Section 2.23(a)(iii)(x) or Section 7.1(r)) shall not exceed the Fixed Incremental Amount plus additional amounts so long as the Consolidated Secured Leverage Ratio calculated on a pro forma basis for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered, would not exceed 4.00:1.00, (iii) in the case of syndicated or bilateral credit agreements, indentures or note purchase agreements, any negative or financial covenants applicable to such agreements that are more restrictive (with respect to any indenture or note purchase agreement, taken as a whole) than those contained in this Agreement shall be deemed to be incorporated in this Agreement, *mutatis mutandis*, (iv) the final scheduled maturity date of such Indebtedness is no earlier than the date that is 91 days after the Maturity Date and the weighted average life to maturity of such Indebtedness is equal to or longer than the remaining average weighted life of the Revolving Facility; and (v) such Indebtedness of a Loan Party shall not be guaranteed by any Person that is not a Guarantor and shall not be secured by any assets other than the Collateral; provided, further, that in the case of Indebtedness incurred hereunder in connection with a Limited Condition Acquisition, compliance with clauses (i) and (ii) shall be determined in accordance with Section 1.7.

(l) Indebtedness of the Borrower or any of its Restricted Subsidiaries acquired pursuant to a Permitted Acquisition (or Indebtedness assumed at the time of a Permitted Acquisition of an asset securing such Indebtedness); provided that (x) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition and (y) the amount of all such Indebtedness of Restricted Subsidiaries of the Borrower that are not Guarantors shall not exceed \$25,000,000.

(m) contingent obligations with respect to customary indemnification obligations in favor of sellers (and Affiliates or assignees thereof) in connection with Acquisitions permitted under Section 7.6 and purchasers (and Affiliates or assignees thereof) in connection with Dispositions permitted under Section 7.4;

(n) provided that no Event of Default shall have occurred and be continuing or would occur as a consequence thereof, Indebtedness which serves to refund, replace, extend repurchase,

redeem or refinance any Indebtedness permitted under paragraphs (d), (e), (k), (l) or (o) of this Section, or any Indebtedness issued to so refund, replace, extend, repurchase or refinance such Indebtedness, including, in each case, additional Indebtedness incurred to pay premiums (including tender premiums), defeasance costs and fees and expenses in connection therewith (collectively, the “Permitted Refinancing Indebtedness”) at or prior to its respective maturity; provided, however, that:

(i) (x) the weighted average life to maturity of such Permitted Refinancing Indebtedness shall not be shorter than the weighted average life to maturity of such refinanced Indebtedness at the time of such refunding or refinancing and (y) in the case of Permitted Refinancing Indebtedness of the Existing Convertible Notes, the maturity date thereof shall be at least 91 days after the Maturity Date;

(ii) to the extent such Permitted Refinancing Indebtedness refinances Indebtedness subordinated or pari passu to the Obligations, such Permitted Refinancing Indebtedness is subordinated or pari passu to the Obligations at least to the same extent as the Indebtedness being refunded or refinanced;

(iii) such Permitted Refinancing Indebtedness shall not be in a principal amount in excess of the principal amount of, premium, if any, accrued interest on, and related fees and expenses of, the Indebtedness being refunded, replaced, extended, repurchased, redeemed or refinanced (including any premium, expenses, costs and fees incurred in connection with such refund, replacement or refinancing);

(iv) the obligors in respect of such Permitted Refinancing Indebtedness (including in their capacities as primary obligor and guarantor) were obligors in respect of the Indebtedness being refinanced; and

(v) any Liens securing such Permitted Refinancing Indebtedness are not extended to any property which does not secure the Indebtedness being refinanced and, if the Liens securing the Indebtedness being refinanced are subject to intercreditor arrangements with the Lenders, any Liens securing such Permitted Refinancing Indebtedness are subject to intercreditor arrangements at least as favorable (taken as a whole) to the Administrative Agent and the Lenders as the intercreditor arrangements applicable to the Indebtedness being refinanced;

(o) unsecured Indebtedness of the Borrower or any of its Restricted Subsidiaries and unsecured Guarantee Obligations of any Guarantor in respect of such unsecured Indebtedness; provided that (i) no Event of Default exists or would result from the incurrence thereof and (ii) immediately after giving effect to the incurrence of any such Indebtedness and the use of proceeds thereof (without netting the cash proceeds thereof), (x) the Borrower shall be in pro forma compliance, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for the purpose of testing such pro forma compliance, with each of the financial covenants set forth in Article VI and (y) the Interest Coverage Ratio, calculated on a pro forma basis for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered prior thereto, would not be less than 2.00:1.00; provided, that (x) such Indebtedness of a Loan Party shall not be guaranteed by any Person that is not a Guarantor and (y) any Indebtedness incurred by a Restricted Subsidiary that is not a Guarantor shall not exceed the greater of (i) \$25,000,000 and (ii) 15% of Consolidated EBITDA of the Borrower for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered hereunder prior thereto at any one time outstanding; provided, further, that in the case of Indebtedness incurred hereunder in connection with a Limited Condition Acquisition, compliance with clauses (i) and (ii) shall be determined in accordance with Section 1.7.

(p) to the extent constituting Indebtedness, obligations under treasury, depository or other cash management services entered into in the ordinary course of business;

(q) Unsecured Indebtedness of the Borrower and/or any Restricted Subsidiary in an aggregate outstanding principal amount not to exceed 100% of the amount of any capital contributions or

other proceeds received by the Borrower or any Restricted Subsidiary from the issuance or sale of its Qualified Stock;

(r) Indebtedness in respect of (i) one or more series of notes issued by any of the Loan Parties that are secured by Liens on the Collateral permitted by Section 7.2(u) ranking pari passu with the Liens securing the Obligations, in each case issued in a public offering, Rule 144A or other private placement in lieu of the foregoing, and (ii) loans made to any of the Loan Parties that are secured by Liens on Collateral ranking pari passu to the Liens securing the Obligations (any such Indebtedness, “Incremental Equivalent Debt”); provided that (A) the aggregate initial principal amount of all Incremental Equivalent Debt (together with the initial principal amount of all Indebtedness incurred pursuant to Section 2.23(a)(iii)(x) and Section 7.1(k)) shall not exceed the Fixed Incremental Amount plus additional amounts so long as the First Lien Leverage Ratio calculated on a pro forma basis for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered, would not exceed 4.00:1.00, (B) the incurrence of such Indebtedness shall be subject to clauses (i), (ii) and (iv) of Section 2.23(b), as if such Incremental Equivalent Debt constituted an Incremental Term Loan Facility (and with respect to Incremental Equivalent Debt in the form of notes, as if such Incremental Term Loans were “term loan B”), (C) at the time of such request, no Event of Default shall have occurred and be continuing and the Borrower shall be in compliance with the covenants contained in Article VI determined on a pro forma basis (without netting the cash proceeds of any such Incremental Equivalent Debt), treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for the purpose of testing such pro forma compliance, as of the last day of the most recent period of the Borrower for which financial statements are available (D) any Incremental Equivalent Debt that is secured shall be secured only by the Collateral and on a pari passu basis with the Collateral securing the Obligations and subject to a Market Intercreeitor Agreement or an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent, which such intercreditor agreement shall provide that any Liens securing such Incremental Equivalent Debt shall rank no higher in priority than the Liens securing the Obligations, (E) no Incremental Equivalent Debt may be guaranteed by any Person that is not a Loan Party or secured by any assets other than the Collateral and (E) the terms and conditions including financial maintenance covenants (if any) applicable to such Incremental Equivalent Debt (x) shall not be more favorable to the holders of such Indebtedness than those applicable under this Agreement (except for covenants or other provisions (i) applicable only to periods after the Latest Maturity Date or (ii) that are also for the benefit of all other Lenders in respect of Loans and Commitments outstanding at the time such Incremental Equivalent Debt is incurred); provided, further, that in the case of Indebtedness incurred hereunder in connection with a Limited Condition Acquisition, compliance with clauses (A) and (C) of the first proviso above shall be determined in accordance with Section 1.7;

(s) other Indebtedness in an aggregate outstanding principal amount not to exceed at any time outstanding the greater of (i) \$25,000,000 and (ii) 15% Consolidated EBITDA of the Borrower for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered hereunder prior thereto; and

(t) to the extent constituting Indebtedness, obligations, contingent or otherwise, for the payment of cash under any non-compete, consulting or similar agreement entered into with the seller of a Target or any other similar arrangements providing for the deferred payment of the purchase price (including earn-out obligations) (such obligations, “Deferred Consideration”) for an acquisition permitted under this Agreement; provided that at the time of consummation of such acquisition, such Deferred Consideration shall be included in the purchase price and shall be treated as Consolidated Total Debt solely for purposes of determining whether such acquisition is permitted hereunder.

Section 7.2 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for Taxes not yet delinquent or that are being contested in good faith by appropriate proceedings; provided that reserves with respect thereto (if required by, and to the extent required by, GAAP) are maintained on the books of the Borrower or its Restricted Subsidiaries, as the case may be, in conformity with GAAP (or, in the case of Foreign Subsidiaries, generally accepted accounting principles in effect from time to time in their respective jurisdiction of organization);



(b) landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, supplier, construction or other like Liens in the ordinary course of business that are not overdue for a period of more than 45 days or that are being bonded or contested in good faith by appropriate proceedings;

(c) (i) pledges or deposits made in connection with workers' compensation, unemployment insurance and other social security legislation and similar laws or regulations, and (ii) Liens (A) of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon or (B) in favor of a banking institution or financial intermediary, encumbering amounts credited to deposit or securities accounts (including the right of set-off) arising in the ordinary course of business in connection with the maintenance of such accounts;

(d) pledges and deposits to secure the performance of bids, contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds, utility payments and other obligations of a like nature incurred in the ordinary course of business;

(e) zoning restrictions, survey exceptions and such matters as an accurate survey would disclose, mortgage rights, easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, do not materially interfere with the ordinary conduct of the business of the Borrower or its Subsidiaries, taken as a whole;

(f) Liens in existence on the Closing Date and listed on Schedule 7.2(f) and extensions, renewals and replacements of any such Liens so long as the principal amount of Indebtedness or other obligations secured thereby is not increased and so long as such Liens are not extended to any other property of the Borrower or any of its Restricted Subsidiaries;

(g) Liens securing Indebtedness of the Borrower or any other Restricted Subsidiary incurred pursuant to Section 7.1(e) to finance the acquisition of fixed or capital assets; provided that (i) such Liens shall be created within 180 days of the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and proceeds thereof and (iii) the amount of Indebtedness secured thereby is not increased and extensions, renewals and replacements of any such Liens so long as the principal amount of Indebtedness or other obligations secured thereby is not increased and so long as such Liens are not extended to any other property of the Borrower or any of its Restricted Subsidiaries;

(h) Liens (i) created pursuant to the Loan Documents or (ii) granted in favor of any Issuing Bank pursuant to arrangements designed to eliminate such Issuing Bank's risk with respect to any Defaulting Lender's or Defaulting Lenders' participation in Letters of Credit, as contemplated by Section 2.26;

(i) any interest or title of a lessor under any lease entered into by the Borrower or any other Restricted Subsidiary in the ordinary course of its business and covering only the assets so leased;

(j) Liens with respect of leases, licenses, sublicenses or subleases granted to others not interfering in any material respect with the businesses of the Borrower or any of its Subsidiaries;

(k) Liens with respect to operating leases not prohibited under this Agreement and entered into in the ordinary course of business;

(l) Liens so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed (as to the Borrower and all Subsidiaries) 5.0 % of Consolidated Assets as determined as of the last day of the most recent fiscal period for which financial statements have been delivered hereunder prior to the incurrence thereof;

(m) Liens on the assets of Foreign Subsidiaries securing Indebtedness permitted under Section 7.1(j);

(n) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(o) Liens on the assets of joint ventures and their Subsidiaries (and Restricted Subsidiaries the sole assets of which are the equity interests in one or more joint ventures) securing obligations of such Persons that are not prohibited by Section 7.1;

(p) attachment, judgment or other similar Liens securing judgments or decrees not constituting an Event of Default under Section 8.1(h) or securing appeal or other surety bonds related to such judgments or decrees;

(q) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business;

(r) statutory Liens and rights of offset, revocation, refund or chargeback arising in the ordinary course of business of the Borrower and its Restricted Subsidiaries;

(s) cash collateral supporting letters of credit permitted pursuant to Section 7.1 in an aggregate amount not exceeding 105% of the aggregate fact amounts thereof;

(t) pledges of cash or Cash Equivalents or deposits of cash or Cash Equivalents made to support any obligations of the Group Members (including cash collateral to secure obligations under letters of credit permitted pursuant to Section 7.1(h)) so long as such pledges and deposits are not prohibited by Section 7.6;

(u) Liens on the Collateral securing Indebtedness (and interest and related obligations) permitted under clause (k) or (r) of Section 7.1 as long as such Liens are subject to a Market Intercreditor Agreement or an intercreditor agreement otherwise reasonably satisfactory to the Administrative Agent;

(v) Liens on property or assets acquired pursuant to a Permitted Acquisition, or on property or assets of a Restricted Subsidiary of the Borrower in existence at the time such Restricted Subsidiary is acquired pursuant to a Permitted Acquisition; provided that (i) any Indebtedness that is secured by such Liens is permitted to exist under Section 7.1(l), and (ii) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any other asset of the Borrower or any of its Restricted Subsidiaries and extensions, renewals and replacements of any such Liens so long as the principal amount of Indebtedness or other obligations secured thereby is not increased and so long as such Liens are not extended to any other property of the Borrower or any of its Restricted Subsidiaries;

(w) Liens securing obligations in respect of cash pooling, treasury, depository and other cash management arrangements entered into in the ordinary course of business;

(x) Liens on the related escrowed Net Cash Proceeds of Indebtedness arising in connection with Escrow Funding Arrangements;

(y) Liens securing Indebtedness incurred to finance deferred insurance premiums permitted under Section 7.1(f), provided that such Liens shall be permitted only with respect to unearned premiums and dividends which may become payable under the relevant insurance policies and loss payments which reduce the unearned premiums under such insurance policies;

(z) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; and

(aa) Liens in connection with any vendor credit card program in the ordinary course of business and consistent with past practice.

Section 7.3 **Fundamental Changes.** Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) any Restricted Subsidiary may be merged, consolidated with or into or transferred to the Borrower (provided that the Borrower shall be the continuing or surviving Person) or with, into or to any other Subsidiary (provided that, if any such Restricted Subsidiary is a Guarantor, either (x) (i) the Guarantor shall be the continuing or surviving Person or (ii) simultaneously with the applicable merger or consolidation, the continuing Person shall become a Guarantor or (y) if the continuing or surviving Person will not be a Guarantor, the Investment of the assets of the Loan Party in and to the Subsidiary that is not a Loan Party is permitted under Section 7.6);

(b) any Restricted Subsidiary that is not a Loan Party may be merged, consolidated, amalgamated, liquidated, wound-up or dissolved or all or substantially all of its property or business Disposed of with, into or to a Restricted Subsidiary that is not a Loan Party;

(c) any Restricted Subsidiary may Dispose of any or all of its assets to the Borrower or any Guarantor (upon voluntary liquidation or otherwise);

(d) any Disposition otherwise permitted pursuant to Section 7.4 and that does not constitute all or substantially all of the property or business of the Borrower and its Restricted Subsidiaries taken as a whole may be completed; and

(e) any Permitted Acquisition otherwise permitted pursuant to Section 7.6 may be completed.

Section 7.4 **Disposition of Property.** Dispose of any of its property, including Intellectual Property, whether now owned or hereafter acquired, or, in the case of any Restricted Subsidiary, issue or sell any shares of such Restricted Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of property that the Borrower or any Restricted Subsidiary reasonably determines is obsolete, surplus, worn out, or no longer useful in its business, or is replaced in the ordinary course of business, including the lease or sublease of excess or unneeded real property;

(b) the Disposition of inventory, internally manufactured test systems or cash or Cash Equivalents in the ordinary course of business;

(c) Dispositions permitted by Section 7.3, Restricted Payments made in cash permitted by Section 7.5 and Investments made in cash permitted by Section 7.6;

(d) the Disposition or issuance of any Restricted Subsidiary's Capital Stock to the Borrower or any Guarantor;

(e) (i) non-exclusive licensing and cross-licensing arrangements of technology or other Intellectual Property (including the provision of software under an open source license) in the ordinary course of business, (ii) the discontinuance, forfeiture, abandonment or other disposition of any item of Intellectual Property that is no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and the Restricted Subsidiaries, as determined in the exercise of the Borrower's or the applicable Restricted Subsidiary's reasonable business judgment or (iii) exclusive intercompany licenses in existence on the Closing Date and, in each case of (i), (ii) and (iii), which does not materially interfere with the business of the Borrower and the Restricted Subsidiaries;

(f) the Disposition of any property or assets, or the issuance of any Restricted Subsidiaries' Capital Stock, (i) to any Loan Party, (ii) by any Restricted Subsidiary that is not a Guarantor to any other Restricted Subsidiary that is not a Guarantor and (iii) by any Loan Party to any Restricted Subsidiary that is not a Guarantor in an aggregate amount (calculated as the fair market value of property or assets so disposed of) under this clause (f)(iii) not to exceed 5% of Consolidated Assets since the

Closing Date as determined as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder;

(g) transfers of property as a result of any Recovery Event;

(h) leases, occupancy agreements and subleases of property in the ordinary course of business;

(i) the Disposition of receivables and customary related assets pursuant to factoring programs on customary market terms for such transactions with respect to receivables of, and generated by, Foreign Subsidiaries;

(j) the Disposition of other property (other than receivables and customary related assets and other than Dispositions of Intellectual Property made to a Subsidiary of the Borrower that is not a Loan Party) having a net book value not to exceed 25.0% of Consolidated Assets (as determined as of the last day of the most recent fiscal period for which financial statements have been delivered hereunder prior to the Disposition thereof) in the aggregate during any fiscal year of the Borrower; provided, however, with respect to any such Dispositions of property pursuant to this clause (j) having a net book value in excess of 10.0% of the Consolidated Assets (as determined as of the last day of the most recent fiscal period for which financial statements have been delivered hereunder prior to the Disposition thereof), such Dispositions shall only be permitted if (x) not less than 75% of the aggregate sale price from such Disposition shall be paid in cash or Cash Equivalents, (y) the Borrower shall be in pro forma compliance, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for the purpose of testing such pro forma compliance, with each of the financial covenants set forth in Article VI after giving effect to such Disposition and recomputed for the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered hereunder and (z) such Disposition (including any Disposition made to a Subsidiary of the Borrower that is not a Loan Party) shall be for fair market value; provided, however, that for the purposes of this clause (j), the following shall be deemed to be Cash Equivalents: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that (i) are assumed by the transferee with respect to the applicable Disposition or (ii) are otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or its Restricted Subsidiaries) and, in each case, for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing and (B) any securities, notes or other obligations or assets received by the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received) within 180 days following the closing of the applicable Disposition;

(k) Disposition of assets acquired pursuant to a Permitted Acquisition that constitute "non-core assets" within 365 days after the consummation of such Permitted Acquisition; provided, that not less than 75% of the aggregate sale price from such Disposition shall be paid in cash or Cash Equivalents;

(l) Dispositions of Unrestricted Subsidiaries;

(m) discounts, adjustments or forgiveness of accounts receivable and other contract claims in the ordinary course of business or in connection with collection or compromise thereof; and

(n) Dispositions among the Borrower or any Restricted Subsidiary of the Borrower in connection with any consumption based model implemented after the Closing Date so long as such Disposition is on arm's length terms and is settled in cash or Cash Equivalents or netted against intercompany receivables.

Section 7.5 **Restricted Payments.** (A) Declare or pay any dividend (other than dividends payable solely in Qualified Stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption,

defeasance, retirement or other acquisition of, any Capital Stock of the Borrower or any Restricted Subsidiary of the Borrower, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Borrower or any Restricted Subsidiary of the Borrower; or (B) make or offer to make any payment, prepayment, repurchase or redemption of or otherwise defease or segregate funds with respect to the principal of any Junior Indebtedness (other than (i) scheduled payments of principal, (ii) customary mandatory prepayments, mandatory repurchases and mandatory redemptions and (iii) refinancing thereof from the Net Cash Proceeds of Permitted Refinancing Indebtedness or Capital Stock of the Borrower other than Disqualified Stock) ((A), and (B), collectively, "Restricted Payments"), except that:

(a) any Restricted Subsidiary may make Restricted Payments to any Loan Party;

(b) any Restricted Subsidiary may make Restricted Payments to the Group Member that is its parent company so long as, in the case of any Restricted Payment made by a Loan Party, such parent company is also a Loan Party;

(c) any Restricted Subsidiary may make Restricted Payments with respect to the Capital Stock of such Restricted Subsidiary; provided that each Group Member shareholder of such Restricted Subsidiary receives at least its ratable share thereof;

(d) the Borrower may make Restricted Payments of the type described in clause (A) set forth in the introductory paragraph of this Section 7.5, within 60 days after the date of declaration thereof, as long as at such declaration date (x) no Default or Event of Default existed (or would exist if such Restricted Payment were made on such date) and (y) subject to Section 1.7 (to the extent applicable) and giving pro forma effect to such declared Restricted Payment, the Borrower shall be in compliance with each of the financial covenants in Article VI, calculated on a pro forma basis, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for the purpose of testing such pro forma compliance, for the period of four consecutive fiscal quarters ended prior to such declaration date for which financial statements have been delivered hereunder prior thereto;

(e) as long as (x) no Default or Event of Default exists immediately before or after giving effect thereto, and (y) subject to Section 1.7 (to the extent applicable) and after giving effect to such Restricted Payment, the Borrower shall be in compliance with each of the financial covenants in Article VI, calculated on a pro forma basis, treating all Deferred Consideration required to be paid other than in common equity interests then outstanding as Consolidated Total Debt solely for the purpose of testing such pro forma compliance, for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered hereunder prior thereto, the Borrower may make Restricted Payments of the type described in clause (B) set forth in the introductory paragraph of this Section 7.5;

(f) the Borrower and its Restricted Subsidiaries may make Investments permitted by Section 7.6;

(g) the Borrower may deliver common stock or preferred stock or other equity securities that constitute Qualified Stock of the Borrower to holders upon conversion or exchange of any convertible preferred stock of the Borrower or Junior Indebtedness (together with any cash in lieu of fractional shares); and

(h) the Borrower may enter into, amend, terminate or otherwise settle any Permitted Call Spread Transaction so long as the convertible Indebtedness or other obligation of the Borrower related thereto was permitted to be incurred under this Agreement.

Section 7.6 **Investments**. Make any Investment except:

(a) extensions of trade credit in the ordinary course of business;

(b) Investments in cash or Cash Equivalents;

- (c) Guarantee Obligations (of Indebtedness or otherwise) not prohibited by Section 7.1;
- (d) loans and advances to employees or directors of any Group Member in the ordinary course of business (including for travel, entertainment and relocation expenses);
- (e) promissory notes and other noncash consideration received in connection with Dispositions permitted by Section 7.4(j);
- (f) intercompany Investments by (i) any Group Member in the Borrower or any Person that, prior to such investment, is a Guarantor, (ii) by any Restricted Subsidiary that is not a Guarantor in any other Restricted Subsidiary that is not a Guarantor and (iii) a Loan Party consisting of the contribution or transfer of Capital Stock of a Foreign Subsidiary held by such Loan Party to a Foreign Subsidiary that is a Restricted Subsidiary;
- (g) Investments consisting of Indebtedness permitted by Section 7.1 (other than clause (b) thereof);
- (h) prepaid expenses and lease, utility, workers, compensation, performance and other similar deposits made in the ordinary course of business;
- (i) Investments (including debt obligations) received in the ordinary course of business by the Borrower or any Restricted Subsidiary in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising out of the ordinary course of business;
- (j) Investments listed on Schedule 7.6(j);
- (k) Hedging Transactions permitted by Section 7.8;
- (l) Permitted Acquisitions;
- (m) other Investments so long as (i) no Default or Event of Default exists immediately prior to or after giving effect to such Investment and (ii) immediately after giving effect to such Investment the Borrower shall be in pro forma compliance, treating all Deferred Consideration required to be other than in common equity interests then outstanding as Consolidated Total Debt solely for the purpose of testing such pro forma compliance, with each of the financial covenants set forth in Article VI; provided, that in the case of Investments made in connection with a Limited Condition Acquisition, compliance with clauses (i) and (ii) shall be determined in accordance with Section 1.7;
- (n) Investments by the Borrower in any Permitted Bond Hedge Transaction;
- (o) Investments not constituting Dispositions among the Borrower and its Restricted Subsidiaries pursuant to transfer pricing and cost plus arrangements in the ordinary course of business and consistent with past practice; and
- (p) other Investments in an aggregate outstanding principal amount not to exceed at any time outstanding the greater of (i) \$50,000,000 and (ii) 30% of Consolidated EBITDA of the Borrower for the period of four consecutive fiscal quarters most recently ended for which financial statements have been delivered hereunder prior thereto;
- (q) provided, that notwithstanding anything to the contrary in this Agreement or this Section 7.6, the aggregate amount of Investments in Unrestricted Subsidiaries made under any provision of this Agreement, taken together with the aggregate value of the assets of all Subsidiaries that have been designated as unrestricted under Section 5.10, in each case since the Closing Date, shall not exceed \$100,000,000.

Section 7.7 **Transactions with Affiliates.** Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than transactions among Group Members) unless such transaction is upon fair and reasonable terms substantially as favorable to the relevant Group Member than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate, except any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by or merged into the Borrower or its Restricted Subsidiaries pursuant to the terms of this Agreement; provided that such agreement was not entered into in contemplation of such acquisition or merger, or any amendment thereto (so long as any such amendment is not disadvantageous to the Lenders in any material respect in the good faith judgment of the Borrower when taken as a whole as compared to such agreement as in effect on the date of such acquisition or merger).

Section 7.8 **Swap Agreements.** Enter into any Hedging Transactions for speculative purposes (rather than risk mitigation); provided, however, that for the avoidance of doubt this Section 7.8 shall not prohibit any Permitted Call Spread Transaction.

Section 7.9 **Accounting Changes.** Make, or permit any of its Restricted Subsidiaries to make, any significant change in accounting treatment or reporting practices, except as required by GAAP, or permit the fiscal year of the Borrower to end on a day other than as contemplated by the Borrower's 52/53 week fiscal year as in effect on the Closing Date.

Section 7.10 **Negative Pledge Clauses.** Enter into or permit to exist or become effective any agreement that prohibits or limits (other than a dollar limit; provided that such dollar limit is sufficient in amount to allow at all times the Liens to secure the obligations under the Loan Documents in full) the ability of the Borrower or any Domestic Subsidiary that is a Restricted Subsidiary to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its obligations under the Loan Documents to which it is a party other than (a) this Agreement and the other Loan Documents or restrictions and conditions imposed by applicable laws, (b) any agreements with customary restrictions that arise in connection with any Lien permitted by Section 7.2 on any asset or property that is not, and is not required to be, Collateral that relates to the asset or property subject to such Lien, (c) (i) any agreements governing Indebtedness permitted by Section 7.1 and any Guarantee Obligations with respect thereto or any Permitted Refinancing Indebtedness in respect thereof (provided that such prohibitions or limitations contained in any agreement referred to in this clause (c)(i) are not materially more restrictive, when taken as a whole, than Section 7.2 hereof) and (ii) any agreement governing any Indebtedness existing as of the Closing Date and any agreement governing any Permitted Refinancing Indebtedness of such Indebtedness existing as of the Closing Date (provided that such prohibitions or limitations contained therein are not materially more restrictive, when taken as whole, than those (if any) in the agreement governing such Indebtedness as of the Closing Date), (d) customary provisions in joint venture agreements and similar agreements and any agreement with respect to Indebtedness primarily incurred to finance the acquisition of an interest in a joint venture that restrict the transfer or encumbrance of assets of, or equity interests in, the applicable joint ventures, (e) any agreement governing letters of credit issued in accordance with Section 7.1(h) or Bank Products, or Hedging Transactions, (f) licenses or sublicenses by the Borrower and its Restricted Subsidiaries of Intellectual Property permitted by this Agreement (in which case, any prohibition or limitation shall only be effective against the Intellectual Property subject thereto), (g) leases permitted by this Agreement if such restrictions or conditions apply only to the property leased or licensed, (h) customary restrictions in any agreements governing Indebtedness of a joint venture which prohibit the pledge of the assets of, or equity interests in, such joint venture, (i) customary restrictions and conditions contained in any agreement relating to the Disposition of any property permitted under or not prohibited by Section 7.4 pending the consummation of such Disposition and (j) restrictions that exist in any agreement in effect at the time a Subsidiary becomes a Subsidiary of Borrower, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary and such restriction applies only to the assets of such Subsidiary.

Section 7.11 **Clauses Restricting Subsidiary Distributions.** Enter into or permit to exist or become effective any contractual consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Restricted Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Loan Party, (b) make loans or advances to, or other Investments in, the Borrower or any other Loan Party or (c) transfer any of its assets

to the Borrower or any other Loan Party, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents or imposed by applicable laws, any agreements governing Indebtedness permitted by Section 7.1 and any agreement governing Permitted Refinancing Indebtedness in respect thereof (provided that such prohibitions or limitations contained therein, when taken as a whole, are not materially more restrictive than the equivalent restrictions in this Agreement and such prohibitions or limitations contained therein will not materially affect the Borrower's ability to fund its operations and make anticipated principal or interest payments (as determined in good faith by senior management or the board of directors of the Borrower)) and any agreement governing any Indebtedness existing as of the Closing Date and any agreement governing any Permitted Refinancing Indebtedness of such Indebtedness existing as of the Closing Date (provided that such prohibitions or limitations contained therein are, when taken as a whole, are not materially more restrictive than those in the agreement governing such Indebtedness as of the Closing Date and such prohibitions or limitations contained therein will not materially affect the Borrower's ability to fund its operations and make anticipated principal or interest payments (as determined in good faith by senior management or the board of directors of the Borrower)), (ii) customary provisions in joint venture agreements and similar agreements that restrict the transfer of equity interests in joint ventures (in which case such restrictions shall relate only to assets of, or equity interests in, such joint venture or any holding company which may hold the Capital Stock of such joint venture), (iii) any restrictions regarding licenses or sublicenses by the Borrower and its Restricted Subsidiaries of Intellectual Property permitted by this Agreement (in which case such restriction shall relate only to such Intellectual Property); (iv) restrictions and conditions contained in agreements relating to the sale of all or a substantial part of the capital stock or assets of any Restricted Subsidiary pending such sale, provided such restrictions and conditions apply only to the capital stock or assets to be sold and such sale is permitted hereunder, (v) with respect to restrictions described in clause (c) of this Section 7.11, restrictions contained in agreements governing Indebtedness permitted by Section 7.1(i) (as long as such restrictions apply to the property financed thereby) and (k) hereof (as long as such restrictions apply only to the assets of the applicable joint venture), (vi) any restriction existing by reason of any holder of a Lien permitted by Section 7.2 restricting the transfer of the property subject thereto, (vii) any restriction and condition contained in any agreement relating to the Disposition of any property not prohibited by Section 7.4 pending the consummation of such Disposition, (viii) any restriction in any agreement in effect at the time a Subsidiary becomes a Subsidiary, so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary, (ix) any restriction in any instrument governing Indebtedness assumed in connection with any Permitted Acquisition and permitted pursuant to Section 7.1(l), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired, and (x) any encumbrances or restrictions imposed by any amendments or refinancings that are otherwise permitted by the Loan Documents of the contracts, instruments or obligations referred to in clauses (iv), (viii) or (ix) above; provided that such amendments or refinancings are no more materially restrictive with respect to such encumbrances and restrictions than those prior to such amendment or refinancing; provided further that this Section 7.11 shall not apply to encumbrances or restrictions pursuant to the terms governing Indebtedness of any Foreign Subsidiary provided that such encumbrances or restrictions shall be limited to the assets of such Foreign Subsidiary.

Section 7.12 **Lines of Business.** Enter into any material business, either directly or through any Restricted Subsidiary, except for those businesses (a) in which the Borrower and its Restricted Subsidiaries are engaged on the date of this Agreement or are identified in the Borrower's Form 10-K filed with the SEC prior to the date hereof or (b) that are reasonably related, incidental, ancillary, complementary (including related, complementary, synergistic or ancillary technologies) or similar thereto, or a reasonable extension, development or expansion thereof.

Section 7.13 **Use of Proceeds.** Use the proceeds of the Loans for purposes other than those described in Section 4.15. The Borrower will not, and will not permit any Subsidiary to, request any Loan or Letter of Credit or, directly or knowingly indirectly, use the proceeds of any Loan or any Letter of Credit (i) to fund or facilitate any activities or business of or with any Person, or in any country, region or territory, that, at the time of such funding, financing or facilitation, is the subject of Sanctions or (ii) in furtherance of an offer, payment, promise to pay or authorization of the payment or giving of money or anything else of value to any Person in violation of applicable Anti-Corruption Laws.

Section 7.14 **Amendment of Junior Debt Documents; Amendment of Organizational Documents.** The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or



indirectly, amend, modify or change any term or condition of any documents evidencing Junior Indebtedness or subordination thereof in manner that creates terms upon which such debt would not be permitted to be incurred under this Agreement if such amendment had been in effect at the time of incurrence of such Junior Indebtedness. No Loan Party shall amend its organizational documents in any manner materially adverse to the Lenders.

## Article VIII.

### **EVENTS OF DEFAULT**

Section 8.1 **Events of Default**. If any of the following events (each, an “Event of Default”) shall occur and be continuing on or after the occurrence of the Closing Date:

(a) the Borrower shall fail to pay in the currency required hereunder (i) any principal of any Loan or of any reimbursement obligation in respect of any LC Disbursement, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise; (ii) any interest on any Loan payable under this Agreement when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days; or (iii) any fee or any other amount (other than an amount payable under the preceding clauses (i) and (ii) of this Section or an amount related to a Bank Product Obligation) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days; or

(b) any representation or warranty made or deemed made by any Group Member herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect (except that such materiality qualifier shall not be applicable to any representations, warranties, certificates or statements that already are qualified or modified by materiality in the text thereof) on or as of the date made or deemed made; or

(c) any Group Member shall default in the observance or performance of any agreement contained in clause (i) of Section 5.4(a) (with respect to the Borrower only), Section 5.7(a), Section 5.13, Article VI or Article VII of this Agreement; or

(d) any Group Member shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 30 consecutive days after the earlier of (i) notice thereof from the Administrative Agent or the Required Lenders to the Borrower or (ii) any Responsible Officer of the Borrower becomes aware of such default; or

(e) any Group Member shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation with respect to principal of any Indebtedness described in clause (a), (c) or (e) of the definition thereof, but excluding the Loans or any intercompany Indebtedness) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist (excluding, in the case of any Permitted Convertible Indebtedness, any event or condition that would permit the holder or beneficiary of such Permitted Convertible Indebtedness to convert such Permitted Convertible Indebtedness into cash, shares of the Borrower’s common stock or a combination thereof, in each case to the extent permitted hereunder), the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; provided, that a default, event or condition described in clause (i), (ii)

or (iii) of this paragraph (e) (x) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (e)(e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount (or the Net Mark-to-Market Exposure, as applicable) of which exceeds in the aggregate \$20,000,000, and (y) shall cease to constitute an Event of Default following the cure or waiver of any such default under such Indebtedness prior to the exercise of any remedies by the Administrative Agent or the Required Lenders pursuant to this Section 8.1; or

(f) (i) any Group Member shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of 60 consecutive days; or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the board of directors (or equivalent governing body) of the Borrower shall authorize any action set forth in clause (i) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or (vi) any Group Member shall make a general assignment for the benefit of its creditors; or

(g) (i) an ERISA Event shall have occurred; (ii) a trustee shall be appointed by a United States district court to administer any Single Employer Plan; (iii) the PBGC shall institute proceedings to terminate any Single Employer Plan(s); (iv) any Loan Party or any of their respective ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such entity does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner; or (v) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (v) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect; or

(h) one or more judgments or decrees shall be entered against any Group Member imposing thereon in the aggregate a liability (excluding any amounts paid or covered by insurance as to which the relevant insurance company has not denied coverage) of \$20,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) any of the Loan Documents shall cease, for any reason, to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert, or Liens created by the Loan Documents with respect to a material portion of the Collateral shall cease to be enforceable and of the same effect and priority purported to be created thereby, other than, in any such case, by reason of the release thereof in accordance with the terms of the Loan Documents; or

(j) a Change in Control shall occur or exist;

then, and in every such event (other than an event with respect to the Borrower described in subsection (f) of this Section) and at any time thereafter during the continuance of such event, the Administrative Agent may, and upon the written request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitment of each Lender shall terminate immediately, (ii) declare the principal of and any accrued interest on the Loans, and all other Obligations owing hereunder, to be, whereupon the same shall become, due and payable immediately, without presentment, demand, protest or other notice of any kind,

all of which are hereby waived by the Borrower, (iii) exercise all remedies contained in any other Loan Document, (iv) require the deposit of cash collateral in respect of LC Exposure as provided in Section 2.22(g) and (v) exercise any other remedies available at law or in equity; provided that, if an Event of Default specified in subsection (f) shall occur with respect to the Borrower, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, and all fees and all other Obligations (including such deposit of Cash Collateral pursuant to Section 2.22(g)) shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

Section 8.2 **Application of Proceeds from Collateral**. All proceeds from each sale of, or other realization upon, all or any part of the Collateral by any Secured Party after an Event of Default arises shall be applied as follows:

(a) first, to the reimbursable expenses of the Administrative Agent incurred in connection with such sale or other realization upon the Collateral, until the same shall have been paid in full;

(b) second, to the fees and other reimbursable expenses of the Administrative Agent, the Swingline Lender and each Issuing Bank then due and payable pursuant to any of the Loan Documents, until the same shall have been paid in full;

(c) third, to all reimbursable expenses, if any, of the Lenders then due and payable pursuant to any of the Loan Documents, until the same shall have been paid in full;

(d) fourth, to the fees and interest then due and payable under the terms of this Agreement, until the same shall have been paid in full;

(e) fifth, to the aggregate outstanding principal amount of the Loans, the LC Exposure, the Bank Product Obligations and the Hedging Obligations that constitute Obligations, until the same shall have been paid in full, allocated pro rata among the Secured Parties based on their respective pro rata shares of the aggregate amount of such Loans, LC Exposure, Bank Product Obligations and Hedging Obligations;

(f) sixth, to additional cash collateral for the aggregate amount of all outstanding Letters of Credit until the aggregate amount of all cash collateral held by the Administrative Agent pursuant to this Agreement is at least 105% of the Dollar Equivalent of the LC Exposure after giving effect to the foregoing clause fifth; and

(g) seventh, to the extent any proceeds remain, to the Borrower or as otherwise provided by a court of competent jurisdiction.

All amounts allocated pursuant to the foregoing clauses third through fifth to the Lenders as a result of amounts owed to the Lenders under the Loan Documents shall be allocated among, and distributed to, the Lenders *pro rata* based on their respective Pro Rata Shares; provided that all amounts allocated to that portion of the LC Exposure comprised of the aggregate undrawn amount of all outstanding Letters of Credit pursuant to clauses fifth and sixth shall be distributed to the Administrative Agent, rather than to the Lenders, and held by the Administrative Agent in an account in the name of the Administrative Agent for the benefit of the Issuing Banks and the Lenders as cash collateral for the LC Exposure, such account to be administered in accordance with Section 2.22(f). All cash collateral for LC Exposure shall be applied to satisfy drawings under the Letters of Credit as they occur; if any amount remains on deposit on cash collateral after all letters of credit have either been fully drawn or expired, such remaining amount shall be applied to other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, (a) no amount received from any Guarantor (including any proceeds of any sale of, or other realization upon, all or any part of the Collateral owned by such Guarantor) shall be applied to any Excluded Swap Obligation of such Guarantor and (b) Bank Product Obligations and Hedging Obligations shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting

documentation as the Administrative Agent may request, from the Bank Product Provider or the Lender- Related Hedge Provider, as the case may be. Each Bank Product Provider or Lender-Related Hedge Provider that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

## Article IX.

### THE ADMINISTRATIVE AGENT.

#### Section 9.1 Appointment of the Administrative Agent.

(a) Each Lender irrevocably appoints Barclays Bank PLC as the Administrative Agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent under this Agreement and the other Loan Documents, together with all such actions and powers that are reasonably incidental thereto. The Administrative Agent may perform any of its duties hereunder or under the other Loan Documents by or through any one or more sub-agents or attorneys-in-fact appointed by the Administrative Agent. The Administrative Agent and any such sub- agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub-agent, attorney-in-fact or Related Party and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

(b) Each applicable Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith until such time and except for so long as the Administrative Agent may agree at the request of the Required Lenders to act for the applicable Issuing Bank with respect thereto; provided that the applicable Issuing Bank shall have all the benefits and immunities (i) provided to the Administrative Agent in this Article with respect to any acts taken or omissions suffered by the applicable Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and the application and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term “Administrative Agent” as used in this Article included the applicable Issuing Bank with respect to such acts or omissions and (ii) as additionally provided in this Agreement with respect to the applicable Issuing Bank.

(c) It is understood and agreed that the use of the term “agent” herein or in any other Loan Document (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.

Section 9.2 Nature of Duties of the Administrative Agent. The Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing; (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by

the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it, its sub-agents or its attorneys-in-fact with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2) or in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents or attorneys-in-fact except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof (which notice shall include an express reference to such event being a “Default” or “Event of Default” hereunder) is given to the Administrative Agent by the Borrower or any Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms and conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. The Administrative Agent may consult with legal counsel (including counsel for the Borrower) concerning all matters pertaining to such duties.

**Section 9.3 Lack of Reliance on the Administrative Agent.** Each of the Lenders, the Swingline Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent, any other Issuing Bank or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the Lenders, the Swingline Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Issuing Bank or any other Lender and based on such documents and information as it has deemed appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder, 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 Loan Parties. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

**Section 9.4 Certain Rights of the Administrative Agent.** If the Administrative Agent shall request instructions from the Required Lenders with respect to any action or actions (including the failure to act) in connection with this Agreement, the Administrative Agent shall be entitled to refrain from such act or taking such act unless and until it shall have received instructions from such Lenders, and the Administrative Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders where required by the terms of this Agreement.

**Section 9.5 Reliance by the Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper

Person. The Administrative Agent may also rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of such counsel, accountants or experts.

Section 9.6 **The Administrative Agent in its Individual Capacity.** The bank serving as the Administrative Agent shall have the same rights and powers under this Agreement and any other Loan Document in its capacity as a Lender as any other Lender and may exercise or refrain from exercising the same as though it were not the Administrative Agent; and the terms “Lenders”, “Required Lenders”, and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity. The bank acting as the Administrative Agent and its Affiliates may accept de- posits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or Affiliate of the Borrower as if it were not the Administrative Agent hereunder.

Section 9.7 **Successor Administrative Agent.**

(a) The Administrative Agent may resign at any time by giving 30 days prior written notice thereof to the Lenders and the Borrower (or, if a successor Administrative Agent has been appointed in accordance with the terms hereof prior to the end of such 30-day period, such shorter period of time). Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent, subject to approval by the Borrower provided that no Event of Default shall exist at such time. If no successor Administrative Agent shall have been so appointed, and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a commercial bank organized under the laws of the United States or any state thereof or a bank which maintains an office in the United States. Any resignation by the Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Bank and Swingline Lender. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder: (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swingline Lender; (ii) the retiring Issuing Bank and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents (other than its confidentiality obligations under Section 10.11); and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

(b) Upon the acceptance of its appointment as the Administrative Agent hereunder by a successor, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. If, within 60 days after written notice is given of the retiring Administrative Agent’s resignation under this Section, no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 60th day (i) the retiring Administrative Agent’s resignation shall become effective, (ii) the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents (other than its confidentiality obligations under Section 10.11) and (iii) the Required Lenders shall thereafter perform all duties of the retiring Administrative Agent under the Loan Documents until such time as the Borrower and the Required Lenders appoint a successor Administrative Agent as provided above (with the approval of the Borrower if so required pursuant to the terms above). After any retiring Administrative Agent’s resignation hereunder, the provisions of this Article shall continue in effect for the benefit of such retiring Administrative Agent and its representatives and agents in respect of any actions taken or not taken by any of them while it was serving as the Administrative Agent.

Section 9.8 **Withholding Tax.** To the extent required by any applicable law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any authority of the United States or any other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from

amounts paid to or for the account of any Lender (because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

Section 9.9 **The Administrative Agent May File Proofs of Claim.**

(a) 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 Revolving Credit Exposure 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:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans or Revolving Credit Exposure 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, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and its agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Section 10.3) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

(b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 10.3.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.10 **Authorization to Execute Other Loan Documents.** Each Lender hereby authorizes the Administrative Agent to execute on behalf of all Lenders all Loan Documents (including, without limitation, the Security Documents and any subordination agreements or intercreditor agreements contemplated by, or expressly permitted by, this Agreement) other than this Agreement.

Section 9.11 **Collateral and Guaranty Matters.** The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Termination Date, (ii) to the extent necessary or appropriate to permit consummation of any transaction not prohibited by any Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.2;

(b) to release any Loan Party from its obligations under the applicable Security Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder or in connection with the change in status of any Subsidiary which has become an Excluded Subsidiary;

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Security Document to the holder of any Lien on such property that is permitted by Section 7.2(g); and

(d) to enter into any Market Intercreditor Agreements or arrangements reasonably satisfactory to the Administrative Agent in order to effectuate the intent of Section 7.1(k).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, to release any Loan Party from its obligations under the applicable Security Documents pursuant to this Section, or to enter into a Market Intercreditor Agreement. In each case as specified in this Section, at the Borrower's expense, the Administrative Agent is authorized to and shall execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the Liens granted under the applicable Security Documents, or to release such Loan Party from its obligations under the applicable Security Documents, in each case in accordance with the terms of the Loan Documents and this Section.

**Section 9.12 Documentation Agents; Co-Arrangers.** Each Lender hereby designates Deutsche Bank AG, New York Branch and PNC Bank, National Association as Co-Arrangers and Documentation Agents and agrees that the Co-Arrangers and Documentation Agents shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party.

**Section 9.13 Right to Realize on Collateral and Enforce Guarantee.** Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Security Documents, it being understood and agreed that all powers, rights and remedies hereunder and under the Security Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

**Section 9.14 Secured Bank Product Obligations and Hedging Obligations.** No Bank Product Provider or Lender-Related Hedge Provider that obtains the benefits of Section 8.2, the Security Documents or any Collateral by virtue of the provisions hereof or of any other Loan 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 and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 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, Bank Product Obligations and Hedging Obligations unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Bank Product Provider or Lender-Related Hedge Provider, as the case may be.



**Article X.**

**MISCELLANEOUS**

Section 10.1 **Notices.**

(a) **Written Notices.**

(i) Except in the case of notices and other communications expressly permitted hereunder to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy or electronic transmission (subject to clause (b) below), as follows:

**To the Borrower:**

Pure Storage, Inc.,  
650 Castro Street, Suite 400  
Mountain View, California 94041  
Attention: \*\*\*  
Tel: \*\*\*  
Email: \*\*\*  
with a copy to: General Counsel

**Administrative Agent, Issuing Banks and Swingline Lender:**

**For Payments and Requests for Extensions of Credit:**

Barclays Bank PLC  
Loan Operations  
1301 Avenue of the Americas  
New York, NY 10019  
Attn: \*\*\*  
Tel: \*\*\*  
Email: \*\*\*  
with a copy to \*\*\*

Escalation: \*\*\*  
Tel: \*\*\*  
Email: \*\*\*

**To Barclays Bank PLC as Issuing Bank:**

Barclays Bank PLC  
Bank Debt Management Group  
745 Seventh Avenue  
New York, NY 10019  
Attn: Letter of Credit Department and BDM LC Support Team  
Tel: \*\*\*  
Fax: \*\*\*  
Email: \*\*\*

**To any other Lender:**

the address set forth in the Administrative Questionnaire or the Assignment and Acceptance executed by such Lender

Any party hereto may change its address, telecopy number or e-mail for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications sent to any party hereto in accordance with the provisions of this Agreement 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, to the extent provided in clause (b) below and effective as provided in such clause; provided that notices and other communications to the Administrative Agent and an Issuing Bank pursuant to Article II shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(ii) Any agreement of the Administrative Agent, any Issuing Bank or any Lender herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Borrower. The Administrative Agent, each Issuing Bank and each Lender shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Administrative Agent, the Issuing Banks and the Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by the Administrative Agent, any Issuing Bank or any Lender in reliance upon such telephonic or facsimile notice. The obligation of the Borrower to repay the Loans and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Administrative Agent, any Issuing Bank or any Lender to receive written confirmation of any telephonic or facsimile notice or the receipt by the Administrative Agent, any Issuing Bank or any Lender of a confirmation which is at variance with the terms understood by the Administrative Agent, such Issuing Bank and such Lender to be contained in any such telephonic or facsimile notice.

(b) Electronic Communications.

(i) Notices and other communications to the Lenders and the Issuing Banks 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 Issuing Bank if such Lender or such Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving, or is unwilling to receive, notices by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and identifying the website address therefor; provided that, in the case of clauses (A) and (B) above, 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.

(iii) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Banks and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar electronic system.

(iv) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS IN THE COMMUNICATIONS (AS DEFINED BELOW) AND FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties have any liability to any Loan Party or any of their respective Subsidiaries, any Lender, any Issuing Bank or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses, whether or not based on strict liability (whether in tort, contract or otherwise), arising out of any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of the Administrative Agent or such Related Party; provided, however, that in no event shall the Administrative Agent or any Related Party have any liability to any Loan Party or any of their respective Subsidiaries, any Lender, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages) arising out of any Loan Party’s or the Administrative Agent’s transmission of Communications. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through the Platform.

#### Section 10.2 **Waiver; Amendments.**

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document, and no course of dealing between the Borrower and the Administrative Agent or any Lender, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power hereunder or thereunder. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies provided by law. No waiver of any provision of this Agreement or of any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by subsection (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as otherwise provided in this Agreement, including, without limitation, as provided in Section 2.16 with respect to the implementation of a Benchmark Replacement or Conforming Changes (as set forth therein) and Section 2.23, no amendment or waiver of any provision of this Agreement or of the other Loan Documents (other than the Engagement Letter or any other fee letters entered into after the date hereof with the Administrative Agent), nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Lenders or the Borrower and the Administrative Agent with the consent of the Required Lenders, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that, no amendment, waiver or consent shall:

- (i) increase the Commitment of any Lender without the written consent of such Lender;
- (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees or other amounts payable hereunder, without the written consent of each Lender affected thereby (except (x) in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders) and (y) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii));
- (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or LC Disbursement or any fees or other amounts hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby;
- (iv) (A) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender or (B) change Section 8.2 in a manner that would alter the *pro rata* sharing of payments or the order of application required thereby without the written consent of each Lender affected thereby;
- (v) change any of the provisions of this subsection (b) or the definition of “Required Facility Lenders”, “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender affected thereby;
- (vi) release all or substantially all of the Guarantors, or limit the liability of such Guarantors, under any guaranty agreement guaranteeing any of the Obligations, without the written consent of each Lender (except as expressly provided in Section 9.11);
- (vii) release all or substantially all Collateral securing any of the Obligations, without the written consent of each Lender (except as expressly provided in Section 9.11);
- (viii) release the Borrower from all or substantially all of its obligations under the Guarantee and Collateral Agreement without the written consent of each Lender (except as expressly provided in Section 9.11);
- (ix) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted under the Security Documents, to any other Indebtedness or Lien, as the case may be, without the written consent of each Lender;

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights, duties or obligations of the Administrative Agent, the Swingline Lender or any Issuing Bank without the prior written consent of such Person.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended, and amounts payable to such Lender hereunder may not be permanently reduced, without the consent of such Lender (other than reductions in fees and interest in which such reduction does not disproportionately affect such Lender). Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 10.3), such Lender shall have no other commitment or other obligation hereunder and such Lender shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

Notwithstanding the foregoing, this Agreement may be amended or amended and restated (w) with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing of all or a portion of the Loans outstanding under an Incremental Term Facility or any prior Replacement Facility (“Refinanced Term Loans”) with a replacement term loan tranche hereunder which shall be Loans hereunder (“Replacement Term Loans”); provided that (i) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans plus fees and expenses in connection therewith, (ii) the weighted average life to maturity of such Replacement Term Loans shall not be shorter than the weighted average life to maturity of such Refinanced Term Loans at the time of such refinancing (except to the extent of nominal amortization for periods where amortization has been eliminated as a result of prepayment of the Refinanced Term Loans) and (iii) all other terms applicable to such Replacement Term Loans shall be substantially identical to or, taken as a whole, less favorable to the Lenders providing such Replacement Term Loans, than those applicable to such Refinanced Term Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of any Loans in effect immediately prior to such refinancing, (x) with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Revolving Facility (as defined below) to permit the refinancing of any Refinanced Term Loans or the Revolving Facility (“Refinanced Revolving Facility” and collectively with Refinanced Term Loans, “Refinanced Facilities”) with a replacement revolving facility hereunder (“Replacement Revolving Facility” and collectively with Replacement Term Loans, “Replacement Facilities”); provided that (i) the aggregate principal amount of such Replacement Revolving Facility shall not exceed the aggregate principal amount of such Refinanced Term Loans or Aggregate Revolving Commitment Amount, as applicable, plus fees and expenses in connection therewith, (ii) the final maturity date of such Replacement Revolving Facility shall be no earlier than the final maturity date of the Refinanced Term Loans or the Maturity Date, as applicable, (iii) if refinancing or replacing Refinanced Term Loans, the Replacement Revolving Facility shall be fully drawn on the closing date thereof and the proceeds of the Replacement Revolving Facility shall be used to repay the outstanding Refinanced Term Loans, (iv) if refinancing or replacing a Refinanced Revolving Facility, the Replacement Revolving Facility shall refinance or replace the entire Refinanced Revolving Facility and shall be drawn on the closing date thereof to the extent necessary to repay, and the proceeds of such draw under the Replacement Revolving Facility shall be used to the extent necessary to repay, the outstanding amounts under the Refinanced Revolving Facility and (v) the Replacement Revolving Facility shall be on terms and pursuant to documentation to be determined by the Borrower, the Administrative Agent and the Persons willing to provide such Replacement Revolving Facility; provided that to the extent such terms and documentation are not consistent with the applicable Refinanced Facility (other than with respect to pricing), they shall be reasonably satisfactory to the Administrative Agent, (y) in connection with any Incremental Facility or incurrence of Indebtedness under Section 7.1(k), to add terms more favorable to the Lenders with only the consent of the Borrower, the Administrative Agent and the lenders under the relevant Incremental Facility, if applicable, provided that such covenants shall be for the benefit of all Facilities and (z) with the written consent of only the Required Facility Lenders having loans, other credit exposure and unused commitments under each Facility hereunder that benefits from the covenants under

Article VI to waive, amend or modify Article VI, waive any Default or Event of Default in respect of Article VI, waive, amend or modify any condition precedent set forth in Section 3.2 hereof as it pertains to any Revolving Loan and/or waive any requirement to be in compliance with Article VI on a pro forma basis in connection with any transaction.

In addition, notwithstanding the foregoing, this Agreement, including this Section 10.2, and the other Loan Documents may be amended (or amended and restated) pursuant to Section 2.23 to add any Incremental Facility to this Agreement and (a) 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 (including the rights of the lenders under Incremental Facility to share ratably with the Revolving Facility in prepayments pursuant to Sections 2.11 and 2.12), the Guarantee and Collateral Agreement and the other Loan Documents with the Loans and the accrued interest and fees in respect thereof, (b) to include appropriately the Lenders holding such credit facility in any determination of the Required Lenders and (c) to amend other provision of the Loan Documents so that the Incremental Facility is appropriately incorporated (including this Section 10.2).

Notwithstanding anything to the contrary contained in this Section 10.2, the Administrative Agent and the Borrower, in their sole discretion, may collectively amend, modify or supplement any provision of this Agreement or any other Loan Document to (i) amend, modify or supplement such provision or cure any ambiguity, omission, mistake, error, defect or inconsistency, so long as such amendment, modification or supplement does not directly and adversely affect the obligations of any Lender or Issuing Bank and (ii) permit additional Domestic Subsidiaries (excluding any U.S. Pass Through Foreign Holdcos) of the Borrower to guarantee the Obligations and/or provide Collateral therefor. Such amendments shall become effective without any further action or consent of any other party to any Loan Document. Upon the request of the Borrower, the Administrative Agent shall release any Guarantor from the Guarantee and Collateral Agreement if such Guarantor ceases to qualify as a Guarantor (in accordance with the definition of such term as provided herein).

Notwithstanding the foregoing, this Agreement may be amended in accordance with Section 2.27 (including as contemplated by an Extension Agreement in accordance with Section 2.27 evidencing Extension Permitted Amendments).

### Section 10.3 **Expenses; Indemnification**

(a) The Borrower shall pay (i) all reasonable, out-of-pocket costs and expenses of the Administrative Agent and its Affiliates (but limited, in the case of legal fees, charges, disbursements and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, if necessary, of one local counsel in any relevant jurisdiction to all such Persons, taken as a whole and, solely in the case of an actual or potential conflict of interest, (x) one additional counsel to all affected Persons, taken as a whole, and (y) one additional local counsel to all affected Persons, taken as a whole, in each relevant jurisdiction), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of the Loan Documents and any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Loan Document shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent, any Issuing Bank or any Lender (but limited, in the case of legal fees, charges, disbursements and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, if necessary, of one local counsel in any relevant jurisdiction to all such Persons, taken as a whole and, solely in the case of an actual or potential conflict of interest, (x) one additional counsel to all affected Persons, taken as a whole, and (y) one additional local counsel to all affected Persons, taken as a whole, in each relevant jurisdiction) in connection with the enforcement or protection of its rights or remedies in connection with this Agreement, including its rights and remedies under this Section, or in connection with the Loans made or any Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender, each Issuing Bank and each Swingline Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel in any relevant jurisdiction to all Indemnitees, taken as a whole and, solely in the case of an actual or potential conflict of interest, (x) one additional counsel to all affected Indemnitees, taken as a whole, and (y) one additional local counsel to all affected Indemnitees, taken as a whole, in each relevant jurisdiction) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on any Properties, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee, (y) a claim brought by the Borrower or any other Loan Party against an Indemnitee for a material breach of such Indemnitee’s obligations hereunder or under any other Loan Document, or (z) any dispute solely among any Indemnitees, the Administrative Agent, or any of their respective Related Parties (other than claims against Administrative Agent, the Arrangers, or any Person or entity acting in a similar capacity acting pursuant to this Agreement or in its capacity as such) to the extent such disputes did not arise from any act or omission of the Borrower or its Affiliates. Subsection (b) hereof shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid to the Administrative Agent, any Issuing Bank or the Swingline Lender under subsection (a) or (b) hereof, each Lender severally agrees to pay to the Administrative Agent, such Issuing Bank or the Swingline Lender, as the case may be, such Lender’s *pro rata* share (in accordance with its respective Revolving Commitment (or Revolving Credit Exposure, as applicable) determined as of the time that the unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified payment, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, such Issuing Bank or the Swingline Lender in its capacity as such.

(d) To the extent permitted by applicable law, no party to this Agreement shall assert, and each party to this Agreement hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated therein, any Loan or any Letter of Credit or the use of proceeds thereof; provided that nothing in this clause (d) shall relieve the Borrower of any obligation it may have to indemnify any Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party. No Indemnitee referred to in Section 10.3 shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) The Borrower shall not, without the prior written consent of the applicable Indemnitee, effect any settlement of any actual or prospective claim, litigation, investigation, arbitration or proceeding in respect of which such Indemnitee is a party and indemnity has been sought under this Section by such Indemnitee, unless such settlement (i) includes an unconditional release of such Indemnitee in form and substance reasonably satisfactory to such Indemnitee from all liability on claims that are the subject matter of such indemnity and (ii) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnitee or any injunctive relief or other non-monetary remedy.

(f) All amounts due under this Section shall be payable not later than ten (10) days after a reasonably detailed written demand therefor.

#### Section 10.4 **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, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Loans and other Revolving Credit Exposure at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.**

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments, Loans and other Revolving Credit Exposure at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans and Revolving Credit Exposure outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans and Revolving Credit Exposure of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date) shall not be less than \$5,000,000 with respect to Revolving Loans and in minimum increments of \$1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and



obligations under this Agreement with respect to the Loans, other Revolving Credit Exposure or the Commitments assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default under Sections 8.1(a) and/or 8.1(f) has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund of a Lender;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund of a Lender; and

(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Commitments.

(iv) Assignment and Acceptance. The parties to each assignment shall deliver to the Administrative Agent (A) a duly executed Assignment and Acceptance, (B) a processing and recordation fee of \$3,500, (C) an Administrative Questionnaire unless the assignee is already a Lender and (D) the documents required under Section 2.20(g).

(v) No Assignment to the certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B) or (C) any Disqualified Assignee.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each Issuing Bank, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section. If the consent of the Borrower to an assignment is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified above), the Borrower shall be deemed to have given its consent unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after notice thereof has actually been delivered by the assigning Lender (through the Administrative Agent) to the Borrower.

(c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in New York, New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans and Revolving Credit Exposure owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for inspection by such Lender at any reasonable time and from time to time upon reasonable prior notice; information contained in the Register shall also be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In establishing and maintaining the Register, the Administrative Agent shall serve as the Borrower's agent solely for tax purposes and solely with respect to the actions described in this Section, and the Borrower hereby agrees that, to the extent Barclays Bank PLC serves in such capacity, Barclays Bank PLC and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees".

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Swingline Lender or any Issuing Bank, sell participations to any Person (other than a natural person, the Borrower, any of the Borrower's Affiliates or Subsidiaries, or a Disqualified Assignee) (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 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 Administrative Agent, the Issuing Banks, the Swingline Lender 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 to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the following to the extent affecting such Participant: (i) increase the Commitment of such Lender; (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder; (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or LC Disbursement or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled

date for the termination or reduction of any Commitment; (iv) change Section 2.21(b) or (c) in a manner that would alter the *pro rata* sharing of payments required thereby; (v) change any of the provisions of Section 10.2(b) or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder; (vi) release all or substantially all of the guarantors, or limit the liability of such guarantors, under any guaranty agreement guaranteeing any of the Obligations (except as expressly provided in Section 9.11); or (vii) release all or substantially all collateral (if any) securing any of the Obligations (except as expressly provided in Section 9.11). Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19, and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant agrees to be subject to Section 2.24 as though it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.21 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non- fiduciary agent of the Borrower, maintain a register in the United States on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under the Code or United States Treasury Regulations, including, without limitation, Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) A Participant shall not be entitled to receive any greater payment under Sections 2.18 and 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation and unless the sale of the participation to such Participant is made with the Borrower’s prior written consent. A Participant shall not be entitled to the benefits of Section 2.20 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.20(e) and (f) as though it were a Lender.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) The Administrative Agent shall not 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 Assignees. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Assignee or (ii) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Assignee.

#### Section 10.5 **Governing Law; Jurisdiction; Consent to Service of Process.**

(a) This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set

forth therein) and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of New York.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York County, Borough of Manhattan, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such District Court or New York state court or, to the extent permitted by applicable law, such appellate court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, any Issuing Bank 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 court 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, or (iii) in connection with any pending bankruptcy, insolvency or similar proceeding in such jurisdiction.

(c) The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in subsection (b) of this Section and brought in any court referred to in subsection (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement or in any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.6 **WAIVER OF JURY TRIAL.** EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.7 **Right of Set-off.** In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, each Lender and each Issuing Bank shall have the right, subject to the prior written consent of the Administrative Agent, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final), in any currency, of the Borrower at any time held or other obligations at any time owing by such Lender and such Issuing Bank to or for the credit or the account of the Borrower against any and all Obligations held by such Lender or such Issuing Bank, as the case may be, irrespective of whether such Lender or such Issuing Bank shall have made demand hereunder, to the extent such Obligations are due and payable; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.26(b) and, pending such payment, shall be segregated by such

Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender and each Issuing Bank agrees promptly to notify the Administrative Agent and the Borrower after any such set-off and any application made by such Lender or such Issuing Bank, as the case may be; provided that the failure to give such notice shall not affect the validity of such set-off and application. Each Lender and each Issuing Bank agrees to apply all amounts collected from any such set-off to the Obligations before applying such amounts to any other Indebtedness or other obligations owed by the Borrower and any of its Subsidiaries to such Lender or such Issuing Bank.

Section 10.8 **Counterparts; Integration.** This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Engagement Letter, the other Loan Documents, and any separate letter agreements relating to any fees payable to the Administrative Agent and its Affiliates constitute the entire agreement among the parties hereto and thereto and their affiliates regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters. Delivery of an executed counterpart to this Agreement or any other Loan Document by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

Section 10.9 **Survival.** All covenants, agreements, representations and warranties made by the Borrower herein and by the Borrower and the other Loan Parties in the certificates, reports, notices or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.18, 2.19, 2.20, Section 10.3 and Article IX and the last sentence of the definition of Applicable Margin and Applicable Percentage shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 10.10 **Severability.** Any provision of this Agreement or any other Loan Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.11 **Confidentiality.** Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to take normal and reasonable precautions to maintain the confidentiality of any information relating to the Borrower or any of its Subsidiaries or any of their respective businesses, to the extent designated in writing as confidential and provided to it by the Borrower or any of its Subsidiaries, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries, except that such information may be disclosed (i) to any Related Party of the Administrative Agent, any Issuing Bank or any such Lender including, without limitation, accountants, legal counsel and other advisors who are informed of the confidential nature of such information and have agreed to receive such information subject to the terms of this Section or are otherwise bound by similar confidentiality obligations, (ii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Administrative Agent, the Issuing Bank, or the Lender, as applicable, agrees to inform the Borrower promptly thereof to the extent not prohibited by law, rule or regulation), (iii) to the extent requested by any regulatory agency or authority purporting to have jurisdiction over it (including any self-

regulatory authority such as the National Association of Insurance Commissioners), (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section, or which becomes available to the Administrative Agent, any Issuing Bank, any Lender or any Related Party of any of the foregoing on a non-confidential basis from a source other than the Borrower or any of its Subsidiaries, (v) in connection with the exercise of any remedy hereunder or under any other Loan Documents or any suit, action or proceeding relating to this Agreement or any other Loan Documents or the enforcement of rights hereunder or thereunder, (vi) subject to execution by such Person of an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (but excluding any Disqualified Assignees (to the extent a list of Disqualified Assignees has been posted to all Lenders)), or (B) any actual or prospective party (or its Related Parties) to any swap or derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (vii) to any rating agency, (viii) to the CUSIP Service Bureau or any similar organization, (ix) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the Financial Industry Regulatory Authority, Inc. or (x) with the consent of the Borrower. Any Person required to maintain the confidentiality of any information as provided for in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord its own confidential information. In the event of any conflict between the terms of this Section and those of any other Contractual Obligation entered into with any Loan Party (whether or not a Loan Document), the terms of this Section shall govern. Each Arranger and each Co-Documentation Agent may, at its own expense, place customary tombstone announcements and advertisements or otherwise publicize its engagement hereunder (which may include the reproduction of any Loan Party's name and logo and other publicly available information) in financial and other newspapers and journals and marketing materials describing its services hereunder. Further, each Arranger and each Co-Documentation Agent may provide to market data collectors, such as league table, or other service providers to the lending industry, information regarding the closing date, size, type, purpose of, and parties to, the credit facilities established hereunder.

Section 10.12 **Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which may be treated as interest on such Loan under applicable law (collectively, the "**Charges**"), shall exceed the maximum lawful rate of interest (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by a Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment (to the extent permitted by applicable law), shall have been received by such Lender.

Section 10.13 **Waiver of Effect of Corporate Seal.** The Borrower represents and warrants that neither it nor any other Loan Party is required to affix its corporate seal to this Agreement or any other Loan Document pursuant to any Requirement of Law, agrees that this Agreement is delivered by the Borrower under seal and waives any shortening of the statute of limitations that may result from not affixing the corporate seal to this Agreement or such other Loan Documents.

Section 10.14 **Patriot Act.** The Administrative Agent and each Lender hereby notifies the Loan Parties that, (a) pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the Patriot Act, and (b) pursuant to the Beneficial Ownership Regulation, it is required to obtain a Beneficial Ownership Certification. The Borrower agrees to cooperate with each Lender and provide true, accurate and complete information to such Lender in response to any such request.

Section 10.15 **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 and each other Loan Party acknowledges and agrees and acknowledges its Affiliates' understanding that (i) (A) the services regarding this Agreement provided by the Administrative Agent, the Arrangers and/or the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent, the Arrangers and the Lenders 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, any other Loan Party or any of their respective Affiliates, or any other Person, and (B) none of the Administrative Agent, the Arrangers or the Lenders has any obligation to the Borrower, any other Loan Party or any of their Affiliates with respect to the transaction contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and each of the Administrative Agent, the Arrangers and the Lenders has no obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers or the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.16 **Location of Closing.** Each Lender and each Issuing Bank acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement to the Administrative Agent in New York. The Borrower acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement and each other Loan Document, together with all other documents, instruments, opinions, certificates and other items required under Section 3.1, to the Administrative Agent in New York. All parties agree that the closing of the transactions contemplated by this Agreement has occurred in New York.

Section 10.17 **Electronic Signatures.** The words "execution," "execute," "signed," "signature," and words of like import in or related to this Agreement or any other document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 10.18 **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 (iii) 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 10.19 **Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent 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 Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless 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 Letters of Credit, 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 10.20 **Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging Obligations or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties 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 10.20, 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).

| <b>Applicable Margin and Applicable Percentage</b> |                                    |   |  |  |  |
|--|------------------------------------|---|--|--|--|
| <b>Pricing Level</b>                               | <b>Consolidated Leverage Ratio</b> | <b>Applicable Percentage for Commitment Fee (per annum)</b> | <b>Applicable Margin for Term SOFR Loans (per annum)</b> | <b>Applicable Margin for Base Rate Loans (per annum)</b> | <b>Applicable Percentage for Letter of Credit Fees (per annum)</b> |
| I  | < 1.0x                             | 25 bps  | 150 bps  | 50 bps   | 150 bps  |
| II   | ≥ 1.0x and <2.0x                   | 30 bps  | 175 bps  | 75 bps   | 175 bps  |
| III  | ≥ 2.0x and < 3.0x                  | 35 bps  | 200 bps  | 100 bps  | 200 bps  |
| IV   | ≥ 3.0x                             | 40 bps  | 225 bps  | 125 bps  | 225 bps  |

Schedule II

| <b>Lenders</b>                      | <b>Revolving Commitment</b> |
|-------------------------------------|-----------------------------|
| BARCLAYS BANK PLC                   | \$68,000,000                |
| HSBC BANK USA, NATIONAL ASSOCIATION | \$66,000,000                |
| JPMORGAN CHASE BANK, N.A.           | \$66,000,000                |
| DEUTSCHE BANK AG, NEW YORK BRANCH   | \$50,000,000                |
| PNC BANK, NATIONAL ASSOCIATION      | \$50,000,000                |
| <b>TOTAL</b>                        | <b>\$300,000,000</b>        |

| <b>Lenders</b>                      | <b>LC Commitment</b> |
|-------------------------------------|----------------------|
| BARCLAYS BANK PLC                   | \$8,500,000          |
| HSBC BANK USA, NATIONAL ASSOCIATION | \$8,250,000          |
| JPMORGAN CHASE BANK, N.A.           | \$8,250,000          |
| <b>TOTAL</b>                        | <b>\$25,000,000</b>  |

## Pure Storage, Inc. Deferred Compensation Plan

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Effective January 1, 2023

### IMPORTANT NOTE

This document has not been approved by the Department of Labor, Internal Revenue Service, or any other governmental entity. An adopting Employer must determine whether the Plan is subject to the Federal securities laws and the securities laws of the various states. An adopting Employer may not rely on this document to ensure any particular tax consequences or to ensure that the Plan is “unfunded and maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees” under Title I of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Employer’s particular situation. FMR LLC, its affiliates and employees cannot provide you with legal advice in connection with the execution of this document. This document should be reviewed by the Employer’s attorney prior to execution.

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## Preamble

The Plan is intended to be a “plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees” within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, or an “excess benefit plan” within the meaning of Section 3(36) of the Employee Retirement Income Security Act of 1974, as amended, or a combination of both. The Plan is further intended to conform with the requirements of Internal Revenue Code Section 409A and the final regulations issued thereunder and shall be interpreted, implemented, and administered in a manner consistent therewith.

## **Article 1 - General**

### **1.1. Plan**

The Plan will be referred to by the name specified in the Adoption Agreement.

### **1.2. Effective Dates**

- (a) Original Effective Date. The Original Effective Date is the date as of which the Plan was initially adopted.
- (b) Amendment Effective Date. The Amendment Effective Date is the date specified in the Adoption Agreement as of which the Plan is amended and restated. Except as otherwise provided in the Adoption Agreement, all amounts deferred under the Plan prior to the Amendment Effective Date shall be governed by the terms of the Plan as in effect on the day before the Amendment Effective Date.
- (c) Special Effective Date. A Special Effective Date may apply to any given provision if so specified in Appendix A of the Adoption Agreement. A Special Effective Date will control over the Original Effective Date or Amendment Effective Date, whichever is applicable, with respect to such provision of the Plan.

### **1.3. Amounts Not Subject to Code Section 409A**

Except as otherwise indicated by the Plan Sponsor in Section 1.01 of the Adoption Agreement, amounts deferred before January 1, 2005 that are earned and vested on December 31, 2004 will be separately accounted for and administered in accordance with the terms of the Plan as in effect on December 31, 2004.

## **Article 2 - Definitions**

Wherever used herein, the following terms have the meanings set forth below, unless a different meaning is clearly required by the context:

### **2.1. Account**

“Account” means an account and any subaccounts established for the purpose of recording amounts credited on behalf of a Participant and any earnings, expenses, gains, losses, or distributions included thereon. The Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant or to the Participant’s Beneficiary pursuant to the Plan.

### **2.2. Administrator**

“Administrator” means the person or persons designated by the Plan Sponsor in Section 1.05 of the Adoption Agreement to be responsible for the administration of the Plan. If no Administrator is designated in the Adoption Agreement, the Administrator is the Plan Sponsor.

### **2.3. Adoption Agreement**

“Adoption Agreement” means the agreement adopted by the Plan Sponsor that establishes the Plan.

### **2.4. Beneficiary**

“Beneficiary” means the persons, trusts, estates, or other entities entitled under Section 8.2 to receive benefits under the Plan upon the death of a Participant.

### **2.5. Board or Board of Directors**

“Board” or “Board of Directors” means the Board of Directors of the Plan Sponsor.

### **2.6. Bonus**

“Bonus” means an amount of incentive remuneration payable by the Employer to a Participant.

### **2.7. Change in Control**

“Change in Control” means the occurrence of an event involving the Plan Sponsor that is described in Section 9.7.

### **2.8. Code**

“Code” means the Internal Revenue Code of 1986, as amended.

### **2.9. Compensation**

“Compensation” has the meaning specified in Section 3.01 of the Adoption Agreement.

### **2.10. Director**

“Director” means a non-employee member of the Board who has been designated by the Employer as eligible to participate in the Plan.

### **2.11. Disability**

“Disability” means that a Participant is disabled as defined in Section 6.01(i) of the Adoption Agreement.

## **2.12. Eligible Employee**

“Eligible Employee” means an employee of the Employer who satisfies the requirements in Section 2.01 of the Adoption Agreement.

## **2.13. Employer**

“Employer” means the Plan Sponsor and any other Related Employer that is listed in Section 1.04 of the Adoption Agreement and which is authorized by the Plan Sponsor to participate in and, in fact, does adopt the Plan.

## **2.14. ERISA**

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

## **2.15. Identification Date**

“Identification Date” means the date as of which Key Employees are determined which is specified in Section 1.06 of the Adoption Agreement.

## **2.16. Key Employee**

“Key Employee” means an employee who satisfies the conditions set forth in Section 9.6.

## **2.17. Participant**

“Participant” means an Eligible Employee or Director who commences participation in the Plan in accordance with Article 3.

## **2.18. Plan**

“Plan” means the unfunded plan of deferred compensation set forth herein, including the Adoption Agreement and any trust agreement, as adopted by the Plan Sponsor, and as amended from time to time.

## **2.19. Plan Sponsor**

“Plan Sponsor” means the entity identified in Section 1.03 of the Adoption Agreement or any successor by merger, consolidation or otherwise.

## **2.20. Plan Year**

“Plan Year” means the period identified in Section 1.02 of the Adoption Agreement.

## **2.21. Related Employer**

“Related Employer” means the Plan Sponsor and (a) any corporation that is a member of a controlled group of corporations as defined in Code Section 414(b) that includes the Plan Sponsor and (b) any trade or business that is under common control as defined in Code Section 414(c) that includes the Plan Sponsor.

## **2.22. Retirement**

“Retirement” has the meaning specified in 6.01(f) of the Adoption Agreement.

## **2.23. Separation from Service**

“Separation from Service” means the date that the Participant dies, retires, or otherwise has a termination of employment with respect to all entities comprising the Related Employer. A Separation from Service does not occur if the Participant is on military leave, sick leave or other bona fide leave of absence if the period of leave does not exceed six months or such longer period during which the Participant’s right to re-employment is provided by statute

or contract. If the period of leave exceeds six months and the Participant's right to re-employment is not provided either by statute or contract, a Separation from Service will be deemed to have occurred on the first day following the six-month period. If the period of leave is due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, where the impairment causes the Participant to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, a 29 month period of absence may be substituted for the six month period.

Whether a termination of employment has occurred is based on whether the facts and circumstances indicate that the Related Employer and the Participant reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the Participant would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36 month period (or the full period of services to the Related Employer if the employee has been providing services to the Related Employer for less than 36 months).

An independent contractor is considered to have experienced a Separation from Service with the Related Employer upon the expiration of the contract (or, in the case of more than one contract, all contracts) under which services are performed for the Related Employer if the expiration constitutes a good-faith and complete termination of the contractual relationship.

If a Participant provides services as both an employee and an independent contractor of the Related Employer, the Participant must separate from service both as an employee and as an independent contractor to be treated as having incurred a Separation from Service. If a Participant ceases providing services as an independent contractor and begins providing services as an employee, or ceases providing services as an employee and begins providing services as an independent contractor, the Participant will not be considered to have experienced a Separation from Service until the Participant has ceased providing services in both capacities.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate Related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as a Director are not taken into account in determining whether the Participant has incurred a Separation from Service as an employee for purposes of a nonqualified deferred compensation plan in which the Participant participates as an employee that is not aggregated under Code Section 409A with any plan in which the Participant participates as a Director.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as an employee are not taken into account in determining whether the Participant has experienced a Separation from Service as a Director for purposes of a nonqualified deferred compensation plan in which the Participant participates as a Director that is not aggregated under Code Section 409A with any plan in which the Participant participates as an employee.

All determinations of whether a Separation from Service has occurred will be made in a manner consistent with Code Section 409A and the final regulations thereunder.

## **2.24. Unforeseeable Emergency**

"Unforeseeable Emergency" means a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse, the Participant's Beneficiary, or the Participant's dependent (as defined in Code Section 152, without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B); loss of the Participant's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

**2.25. Valuation Date**

“Valuation Date” means each business day of the Plan Year that the New York Stock Exchange is open.

**2.26. Years of Service**

“Years of Service” means each one-year period for which the Participant receives service credit in accordance with the provisions of Section 7.01(d) of the Adoption Agreement.

## **Article 3 - Participation**

### ***3.1. Participation***

The Participants in the Plan shall be those Eligible Employees and Directors of the Employer who satisfy the requirements of Section 2.01 of the Adoption Agreement.

### ***3.2. Termination of Participation***

The Administrator may terminate a Participant's participation in the Plan in a manner consistent with Code Section 409A. If the Employer terminates a Participant's participation before the Participant experiences a Separation from Service, the Participant's vested Accounts shall be paid in accordance with the provisions of Article 9.

## **Article 4 - Participant Elections**

### ***4.1. Deferral Agreement***

If permitted by the Plan Sponsor in accordance with Section 4.01 of the Adoption Agreement, each Eligible Employee and Director may elect to defer his or her Compensation within the meaning of Section 3.01 of the Adoption Agreement by executing in writing or electronically, a deferral agreement in accordance with rules and procedures established by the Administrator and the provisions of this Article 4.

A new deferral agreement must be timely executed for each Plan Year during which the Eligible Employee or Director desires to defer Compensation. An Eligible Employee or Director who does not timely execute a deferral agreement shall be deemed to have elected zero deferrals of Compensation for such Plan Year.

A deferral agreement may be changed or revoked during the period specified by the Administrator. Except as provided in Section 9.3, a deferral agreement becomes irrevocable at the close of the specified period.

### ***4.2. Amount of Deferral***

An Eligible Employee or Director may elect to defer Compensation in any amount permitted by Section 4.01(a) of the Adoption Agreement.

### ***4.3. Timing of Election to Defer***

Each Eligible Employee or Director who desires to defer Compensation otherwise payable during a Plan Year must execute a deferral agreement within the period preceding the Plan Year specified by the Administrator. Each Eligible Employee who desires to defer Compensation that is a Bonus must execute a deferral agreement within the period preceding the Plan Year during which the Bonus is earned that is specified by the Administrator; except that if the Bonus can be treated as performance based compensation as described in Code Section 409A(a)(4)(B)(iii), the deferral agreement may be executed within the period specified by the Administrator, which period, in no event, shall end after the date which is six months prior to the end of the period during which the Bonus is earned, provided the Participant has performed services continuously from the later of the beginning of the performance period or the date the performance criteria are established through the date the Participant executed the deferral agreement and provided further that the compensation has not yet become 'readily ascertainable' within the meaning of Treas. Reg. § 1.409A-2(a)(8). In addition, if the Compensation qualifies as 'fiscal year compensation' within the meaning of Treas. Reg. § 1.409A-2(a)(6), the deferral agreement may be made not later than the end of the Employer's taxable year immediately preceding the first taxable year of the Employer in which any services are performed for which such Compensation is payable.



Except as otherwise provided below, an employee who is classified or designated as an Eligible Employee during a Plan Year or a Director who is designated as eligible to participate during a Plan Year may elect to defer Compensation otherwise payable during the remainder of such Plan Year in accordance with the rules of this Section 4.3 by executing a deferral agreement within the thirty (30) day period beginning on the date the employee is classified or designated as an Eligible Employee or the date the Director is designated as eligible, whichever is applicable, if permitted by Section 4.01(b)(ii) of the Adoption Agreement. If Compensation is based on a specified performance period that begins before the Eligible Employee or Director executes his or her deferral agreement, the election will be deemed to apply to the portion of such Compensation equal to the total amount of Compensation for the performance period multiplied by the ratio of the number of days remaining in the performance period after the election becomes irrevocable and effective over the total number of days in the performance period. The rules of this paragraph shall not apply unless the Eligible Employee or Director can be treated as initially eligible in accordance with Treas. Reg. § 1.409A-2(a)(7).

#### **4.4. Election of Payment Schedule and Form of Payment**

All elections of a payment schedule and a form of payment will be made in accordance with rules and procedures established by the Administrator and the provisions of this Section 4.4.

- (a) If the Plan Sponsor has elected to permit annual distribution elections in accordance with Section 6.01(h) of the Adoption Agreement the following rules apply. At the time an Eligible Employee or Director completes a deferral agreement, the Eligible Employee or Director must elect a distribution event (which includes a specified time) and a form of payment for the Compensation subject to the deferral agreement from among the options the Plan Sponsor has made available for this purpose and which are specified in 6.01(b) of the Adoption Agreement. Prior to the time required by Treas. Reg. § 1.409A-2, the Eligible Employee or Director shall elect a distribution event (which includes a specified time) and a form of payment for any Employer contributions that may be credited to the Participant's Account during the Plan Year. If an Eligible Employee or Director fails to elect a distribution event, he or she shall be deemed to have elected Separation from Service as the distribution event. If he or she fails to elect a form of payment, he or she shall be deemed to have elected a lump sum form of payment.
- (b) If the Plan Sponsor has elected not to permit annual distribution elections in accordance with Section 6.01(h) of the Adoption Agreement the following rules apply. At the time an Eligible Employee or Director first completes a deferral agreement but in no event later than the time required by Treas. Reg. § 1.409A-2, the Eligible Employee or Director must elect a distribution event (which includes a specified time) and a form of payment for amounts credited to his or her Account from among the options the Plan Sponsor has made available for this purpose and which are specified in Section 6.01(b) of the Adoption Agreement. If an Eligible Employee or Director fails to elect a distribution event, he or she shall be deemed to have elected Separation from Service in the distribution event. If the Participant fails to elect a form of payment, he or she shall be deemed to have elected a lump sum form of payment.

## **Article 5 - Employer Contributions**

### **5.1. Matching Contributions**

If elected by the Plan Sponsor in Section 5.01(a) of the Adoption Agreement, the Employer will credit the Participant's Account with a matching contribution determined in accordance with the formula specified in Section 5.01(a) of the Adoption Agreement. The matching contribution will be treated as allocated to the Participant's Account at the time specified in Section 5.01(a)(iii) of the Adoption Agreement.

### **5.2. Other Contributions**

If elected by the Plan Sponsor in Section 5.01(b) of the Adoption Agreement, the Employer will credit the Participant's Account with a contribution or contributions determined in accordance with the formula or method specified in Section 5.01(b) of the Adoption Agreement. These contributions will be treated as allocated to the Participant's Account at the time specified in Section 5.01(b)(iii) of the Adoption Agreement.

## **Article 6 - Accounts and Credits**

### ***6.1. Establishment of Account***

For accounting and computational purposes only, the Administrator will establish and maintain an Account on behalf of each Participant which will reflect the credits made pursuant to Section 6.2, distributions or withdrawals, along with the earnings, expenses, gains and losses allocated thereto, attributable to the hypothetical investments made with the amounts in the Account as provided in Article 7. The Administrator may establish and maintain such other records and accounts, as it decides in its discretion to be reasonably required or appropriate to discharge its duties under the Plan.

### ***6.2. Credits to Account***

A Participant's Account will be credited for each Plan Year with the amount of his or her elective deferrals under Section 4.1 at the time the amount subject to the deferral election would otherwise have been payable to the Participant and the amount of Employer contributions, if any, treated as allocated on his or her behalf under Article 5.

## **Article 7 - Investment of Contributions**

### ***7.1. Investment Options***

The amount credited to each Account shall be treated as invested in the investment options designated for this purpose by the Administrator.

### ***7.2. Adjustment of Accounts***

The amount credited to each Account shall be adjusted for hypothetical investment earnings, expenses, gains or losses in an amount equal to the earnings, expenses, gains or losses attributable to the investment options selected by the party designated in Section 9.01 of the Adoption Agreement from among the investment options provided in Section 7.1. If permitted by Section 9.01 of the Adoption Agreement, a Participant (or the Participant's Beneficiary after the death of the Participant) may, in accordance with rules and procedures established by the Administrator, select the investments from among the options provided in Section 7.1 to be used for the purpose of calculating future hypothetical investment adjustments to the Account or to future credits to the Account under Section 6.2 effective as of the Valuation Date coincident with or next following notice to the Administrator. Each Account shall be adjusted as of each Valuation Date to reflect: (a) the hypothetical earnings, expenses, gains, and losses described above; (b) amounts credited pursuant to Section 6.2; and (c) distributions or withdrawals. In addition, each Account may be adjusted for its allocable share of the hypothetical costs and expenses associated with the maintenance of the hypothetical investments provided in Section 7.1.

## **Article 8 - Right to Benefits**

### ***8.1. Vesting***

A Participant, at all times, has a 100% nonforfeitable interest in the amounts credited to his or her Account attributable to his or her elective deferrals made in accordance with Section 4.1.

A Participant's right to the amounts credited to his or her Account attributable to Employer contributions made in accordance with Article 5 shall be determined in accordance with the relevant schedule and provisions in Section 7.01 of the Adoption Agreement. Upon a Separation from Service and after application of the provisions of Section 7.01 of the Adoption Agreement, the Participant shall forfeit the nonvested portion of his or her Account.

### ***8.2. Death***

The Plan Sponsor may elect to accelerate vesting upon the death of the Participant in accordance with Section 7.01(c) of the Adoption Agreement and/or to accelerate distributions upon death in accordance with Section 6.01(b) or Section 6.01(d) of the Adoption Agreement. If the Plan Sponsor does not elect to accelerate distributions upon death in accordance with Section 6.01(b) or Section 6.01(d) of the Adoption Agreement, the vested amount credited to the Participant's Account will be paid in accordance with the provisions of Article 9.

A Participant may designate a Beneficiary or Beneficiaries, or change any prior designation of Beneficiary or Beneficiaries in accordance with rules and procedures established by the Administrator. Whenever a Participant designates a new Beneficiary, all former Beneficiary designations by such Participant shall be revoked automatically. If a Participant and the Participant's spouse divorce, any designations of the spouse as Beneficiary shall become null and void. The former spouse shall be treated as the Beneficiary under the Plan only if after the divorce is final, the Participant expressly re-designates the former spouse as the Participant's Beneficiary.

A copy of the death notice or other sufficient documentation must be filed with and approved by the Administrator. If upon the death of the Participant there is, in the opinion of the Administrator, no designated Beneficiary for part or all of the Participant's vested Account, such amount will be paid to his or her estate (such estate shall be deemed to be the Beneficiary for purposes of the Plan) in accordance with the provisions of Article 9.

### ***8.3. Disability***

If the Plan Sponsor has elected to accelerate vesting upon the occurrence of a Disability in accordance with Section 7.01(c) of the Adoption Agreement and/or to permit distributions upon Disability in accordance with Section 6.01(b) or Section 6.01(d) of the Adoption Agreement, the determination of whether a Participant has incurred a Disability shall be based on the definition of Disability in Section 6.01(i) of the Adoption Agreement and in a manner consistent with the requirements of Code Section 409A.

## **Article 9 - Distribution of Benefits**

### **9.1. Amount of Benefits**

The vested amount credited to a Participant's Account as determined under Articles 6, 7 and 8 shall determine and constitute the basis for the value of benefits payable to the Participant under the Plan.

### **9.2. Method and Timing of Distributions**

Except as otherwise provided in this Article 9, distributions under the Plan shall be made in accordance with the elections made or deemed made by the Participant under Article 4. Subject to the provisions of Section 9.6 requiring a six-month delay for certain distributions to Key Employees, distributions following a payment event shall commence at the time specified in Section 6.01(a) of the Adoption Agreement. If permitted by Section 6.01(g) of the Adoption Agreement, a Participant may elect, at least twelve months before a scheduled distribution event, to delay the payment date for a minimum period of sixty months from the originally scheduled date of payment, provided the election does not take effect for at least twelve months from the date on which the election is made. The distribution election change must be made in accordance with procedures and rules established by the Administrator. The Participant may, at the same time the date of payment is deferred, change the form of payment but such change in the form of payment may not effect an acceleration of payment in violation of Code Section 409A or the provisions of Treas. Reg. § 1.409A-2(b). For purposes of this Section 9.2, a series of installment payments is always treated as a single payment and not as a series of separate payments.

### **9.3. Unforeseeable Emergency**

A Participant may request a distribution due to an Unforeseeable Emergency if the Plan Sponsor has elected to permit Unforeseeable Emergency withdrawals under Section 8.01(a) of the Adoption Agreement. The request must be in writing and must be submitted to the Administrator along with evidence that the circumstances constitute an Unforeseeable Emergency. The Administrator has the discretion to require whatever evidence it deems necessary to determine whether a distribution is warranted, and may require the Participant to certify that the need cannot be met from other sources reasonably available to the Participant. Whether a Participant has incurred an Unforeseeable Emergency will be determined by the Administrator on the basis of the relevant facts and circumstances in its sole discretion, but, in no event, will an Unforeseeable Emergency be deemed to exist if the hardship can be relieved: (a) through reimbursement or compensation by insurance or otherwise, (b) by liquidation of the Participant's assets to the extent such liquidation would not itself cause severe financial hardship, or (c) by cessation of deferrals under the Plan. A distribution due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need and may include any amounts necessary to pay any federal, state, foreign or local income taxes and penalties reasonably anticipated to result from the distribution. The distribution will be made in the form of a single lump sum cash payment. If permitted by Section 8.01(b) of the Adoption Agreement, a Participant's deferral elections for the remainder of the Plan Year will be cancelled upon a withdrawal due to an Unforeseeable Emergency. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with Section 9.6 at the time he or she experiences an Unforeseeable Emergency, the amount being delayed shall not be subject to the provisions of this Section 9.3 until the expiration of the six month period of delay required by section 9.6.

### **9.4. Payment Election Overrides**

If the Plan Sponsor has elected one or more payment election overrides in accordance with Section 6.01(d) of the Adoption Agreement, the following provisions apply. Upon the occurrence of the first event selected by the Plan Sponsor, the remaining vested amount credited to the Participant's Account shall be paid in the form designated to the Participant or his or her Beneficiary regardless of whether the Participant had made different elections of time and/or form of payment or whether the Participant was receiving installment payments at the time of the event.

### **9.5. Cashouts of Amounts Not Exceeding Stated Limit**

If the vested amount credited to the Participant's Account does not exceed the limit established for this purpose by the Plan Sponsor in Section 6.01(e) of the Adoption Agreement at the time he or she incurs a Separation from Service for any reason, the Employer shall distribute such amount to the Participant at the time specified in Section 6.01(a) of the Adoption Agreement in a single lump sum cash payment following such Separation from Service regardless of whether the Participant had made different elections of time or form of payment as to the vested amount credited to his or her Account or whether the Participant was receiving installments at the time of such termination. A Participant's Account, for purposes of this Section 9.5, shall include any amounts described in Section 1.3.

### **9.6. Required Delay in Payment to Key Employees**

Except as otherwise provided in this Section 9.6, a distribution made on account of Separation from Service (or Retirement, if applicable) to a Participant who is a Key Employee as of the date of his or her Separation from Service (or Retirement, if applicable) shall not be made before the date which is six months after the Separation from Service (or Retirement, if applicable).

- (a) A Participant is treated as a Key Employee if: (i) he or she is employed by a Related Employer any of whose stock is publicly traded on an established securities market, and (ii) he or she satisfies the requirements of Code Section 416(i)(1)(A)(i), (ii) or (iii), determined without regard to Code Section 416(i)(5), at any time during the twelve month period ending on the Identification Date.
- (b) A Participant who is a Key Employee on an Identification Date shall be treated as a Key Employee for purposes of the six month delay in distributions for the twelve month period beginning on the first day of a month no later than the fourth month following the Identification Date. The Identification Date and the effective date of the delay in distributions shall be determined in accordance with Section 1.06 of the Adoption Agreement.
- (c) The Plan Sponsor may elect to apply an alternative method to identify Participants who will be treated as Key Employees for purposes of the six month delay in distributions if the method satisfies each of the following requirements: (i) is reasonably designed to include all Key Employees, (ii) is an objectively determinable standard providing no direct or indirect election to any Participant regarding its application, and (iii) results in either all Key Employees or no more than 200 Key Employees being identified in the class as of any date. Use of an alternative method that satisfies the requirements of this Section 9.6(c) will not be treated as a change in the time and form of payment for purposes of Treas. Reg. § 1.409A-2(b).
- (d) The six-month delay does not apply to payments described in Section 9.9(a), (b) or (d) or to payments that occur after the death of the Participant. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with this Section 9.6 at the time he or she incurs a Disability which would otherwise require a distribution under the terms of the Plan, no amount shall be paid until the expiration of the six month period of delay required by this Section 9.6.

### **9.7. Change in Control**

If the Plan Sponsor has elected to permit distributions upon a Change in Control, the following provisions shall apply. A distribution made upon a Change in Control will be made at the time specified in Section 6.01(a) of the Adoption Agreement in the form elected by the Participant in accordance with the procedures described in Article 4. Alternatively, if the Plan Sponsor has elected in accordance with Section 11.02 of the Adoption Agreement to require distributions upon a Change in Control, the Participant's remaining vested Account shall be paid to the Participant or the Participant's Beneficiary at the time specified in Section 6.01(a) of the Adoption Agreement as a single lump sum payment. A Change in

Control, for purposes of the Plan, will occur upon a change in the ownership of the Plan Sponsor, a change in the effective control of the Plan Sponsor or a change in the ownership of a substantial portion of the assets of the Plan Sponsor, but only if elected by the Plan Sponsor in Section 11.03 of the Adoption Agreement. The Plan Sponsor, for this purpose, includes any corporation identified in this Section 9.7. All distributions made in accordance with this Section 9.7 are subject to the provisions of Section 9.6.

If a Participant continues to make deferrals in accordance with Article 4 after he or she has received a distribution due to a Change in Control, the residual amount payable to the Participant shall be paid at the time and in the form specified in the elections he or she makes in accordance with Article 4 or upon his or her death or Disability as provided in Article 8.

Whether a Change in Control has occurred will be determined by the Administrator in accordance with the rules and definitions set forth in this Section 9.7. A distribution to the Participant will be treated as occurring upon a Change in Control if the Plan Sponsor terminates the Plan in accordance with Section 10.2 and distributes the Participant's benefits within twelve months of a Change in Control as provided in Section 10.3.

- (a) Relevant Corporations. To constitute a Change in Control for purposes of the Plan, the event must relate to: (i) the corporation for whom the Participant is performing services at the time of the Change in Control, (ii) the corporation that is liable for the payment of the Participant's benefits under the Plan (or all corporations liable if more than one corporation is liable) but only if either the deferred compensation is attributable to the performance of services by the Participant for such corporation (or corporations) or there is a bona fide business purpose for such corporation (or corporations) to be liable for such payment and, in either case, no significant purpose of making such corporation (or corporations) liable for such payment is the avoidance of federal income tax, or (iii) a corporation that is a majority shareholder of a corporation identified in (i) or (ii), or any corporation in a chain of corporations in which each corporation is a majority shareholder of another corporation in the chain, ending in a corporation identified in (i) or (ii). A majority shareholder is defined as a shareholder owning more than fifty percent (50%) of the total fair market value and voting power of such corporation.
- (b) Stock Ownership. Code Section 318(a) applies for purposes of determining stock ownership. Stock underlying a vested option is considered owned by the individual who owns the vested option (and the stock underlying an unvested option is not considered owned by the individual who holds the unvested option). If, however, a vested option is exercisable for stock that is not substantially vested (as defined by Treas. Reg. § 1.83-3(b) and (j)) the stock underlying the option is not treated as owned by the individual who holds the option.
- (c) Change in the Ownership of a Corporation. A change in the ownership of a corporation occurs on the date that any one person or more than one person acting as a group, acquires ownership of stock of the corporation that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of such corporation. If any one person or more than one person acting as a group is considered to own more than fifty percent (50%) of the total fair market value or total voting power of the stock of a corporation, the acquisition of additional stock by the same person or persons is not considered to cause a change in the ownership of the corporation (or to cause a change in the effective control of the corporation as discussed below in Section 9.7(d)). An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the corporation acquires its stock in exchange for property will be treated as an acquisition of stock. Section 9.7(c) applies only when there is a transfer of stock of a corporation (or issuance of stock of a corporation) and stock in such corporation remains outstanding after the transaction. For purposes of this Section 9.7(c), persons will not be considered to be acting as a group solely because they purchase or own stock of the same corporation at the same time or as a result of a public offering. Persons will, however, be



considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

- (d) Change in the Effective Control of a Corporation. A change in the effective control of a corporation occurs on the date that either (i) any one person, or more than one person acting as a group, acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing thirty percent (30%) or more of the total voting power of the stock of such corporation, or (ii) a majority of members of the corporation's Board of Directors is replaced during any twelve month period by Directors whose appointment or election is not endorsed by a majority of the members of the corporation's Board of Directors prior to the date of the appointment or election, provided that for purposes of this paragraph (ii), the term corporation refers solely to the relevant corporation identified in Section 9.7(a) for which no other corporation is a majority shareholder for purposes of Section 9.7(a). In the absence of an event described in Section 9.7(d)(i) or (ii), a change in the effective control of a corporation will not have occurred. A change in effective control may also occur in any transaction in which either of the two corporations involved in the transaction has a change in the ownership of such corporation as described in Section 9.7(c) or a change in the ownership of a substantial portion of the assets of such corporation as described in Section 9.7(e). If any one person, or more than one person acting as a group, is considered to effectively control a corporation within the meaning of this Section 9.7(d), the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation or to cause a change in the ownership of the corporation within the meaning of Section 9.7(c). For purposes of this Section 9.7(d), persons will or will not be considered to be acting as a group in accordance with rules similar to those set forth in Section 9.7(c) with the following exception. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

- (e) Change in the Ownership of a Substantial Portion of a Corporation's Assets. A change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group (as determined in accordance with rules similar to those set forth in Section 9.7(d)), acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the corporation or the value of the assets being disposed of determined without regard to any liabilities associated with such assets. There is no Change in Control event under this Section 9.7(e) when there is a transfer to an entity that is controlled by the shareholders of the transferring corporation immediately after the transfer. A transfer of assets by a corporation is not treated as a change in ownership of such assets if the assets are transferred to (i) a shareholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock, (ii) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the corporation, (iii) a person, or more than one person acting as a group, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the corporation, or (iv) an entity, at least fifty (50%) of the total value or voting power of which is owned, directly or indirectly, by a person described in Section 9.7(e)(iii). For purposes of the foregoing, and except as otherwise provided, a person's status is determined immediately after the transfer of assets.

### **9.8. Permissible Delays in Payment**

Distributions may be delayed beyond the date payment would otherwise occur in accordance with the provisions of Articles 8 and 9 in any of the following circumstances (as long as the Employer treats all payments to similarly situated Participants on a reasonably consistent basis):

- (a) The Employer may delay payment if it reasonably anticipates that its deduction with respect to such payment would be limited or eliminated by the application of Code Section 162(m). Payment must be made during the Participant's first taxable year in which the Employer reasonably anticipates, or should reasonably anticipate, that if the payment is made during such year the deduction of such payment will not be barred by the application of Code Section 162(m) or during the period beginning with the Participant's Separation from Service and ending on the later of the last day of the Employer's taxable year in which the Participant separates from service or the 15<sup>th</sup> day of the third month following the Participant's Separation from Service. If a scheduled payment to a Participant is delayed in accordance with this Section 9.8(a), all scheduled payments to the Participant that could be delayed in accordance with this Section 9.8(a) will also be delayed.
- (b) The Employer may also delay payment if it reasonably anticipates that the making of the payment will violate federal securities laws or other applicable laws provided payment is made at the earliest date on which the Employer reasonably anticipates that the making of the payment will not cause such violation.
- (c) The Employer reserves the right to amend the Plan to provide for a delay in payment upon such other events and conditions as the Secretary of the Treasury may prescribe in generally applicable guidance published in the Internal Revenue Bulletin.

### **9.9. Permitted Acceleration of Payment**

The Employer may permit acceleration of the time or schedule of any payment or amount scheduled to be paid pursuant to a payment under the Plan provided such acceleration would be permitted by the provisions of Treas. Reg. § 1.409A-3(j)(4), including the following events:

- (a) Domestic Relations Order. A payment may be accelerated if such payment is made to an alternate payee pursuant to and following the receipt and qualification of a domestic relations order as defined in Code Section 414(p).
- (b) Compliance with Ethics Agreement and Legal Requirements. A payment may be accelerated as may be necessary to comply with ethics agreements with the Federal government or as may be reasonably necessary to avoid the violation of Federal, state, local or foreign ethics law or conflicts of laws, in accordance with the requirements of Code Section 409A.
- (c) De Minimis Amounts. A payment may be accelerated if (i) the amount of the payment is not greater than the applicable dollar amount under Code Section 402(g)(1)(B), and (ii) at the time the payment is made the amount constitutes the Participant's entire interest under the Plan and all other plans that are aggregated with the Plan under Treas. Reg. § 1.409A-1(c)(2).
- (d) FICA Tax. A payment may be accelerated to the extent required to pay the Federal Insurance Contributions Act tax imposed under Code Sections 3101, 3121(a) and 3121(v)(2) of the Code with respect to compensation deferred under the Plan (the "FICA Amount"). Additionally, a payment may be accelerated to pay the income tax on wages imposed under Code Section 3401 of the Code on the FICA Amount and to pay the additional income tax at source on wages attributable to the pyramiding Code Section 3401 wages and taxes. The total payment under this subsection (d) may not exceed the aggregate of the FICA Amount and the income tax withholding related to the FICA Amount.
- (e) Section 409A Additional Tax. A payment may be accelerated if the Plan fails to meet the requirements of Code Section 409A; provided that such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Code Section 409A.
- (f) Offset. A payment may be accelerated in the Employer's discretion as satisfaction of a debt of the Participant to the Employer, where such debt is incurred in the ordinary course of the service relationship between the Participant and the Employer, the entire amount of the reduction in any of the Employer's taxable years does not exceed \$5,000, and the reduction is made at the same time and in the same amount as the debt otherwise would have been due and collected from the Participant.
- (g) Other Events. A payment may be accelerated in the Administrator's discretion in connection with such other events and conditions as permitted by Code Section 409A.

## **Article 10 - Amendment and Termination**

### ***10.1. Amendment by Plan Sponsor***

The Plan Sponsor reserves the right to amend the Plan (for itself and each Employer) through action of its Board of Directors or other authorized person. No amendment can directly or indirectly deprive any current or former Participant or Beneficiary of all or any portion of his or her Account which had accrued and vested prior to the amendment.

### ***10.2. Plan Termination Following Change in Control or Corporate Dissolution***

If so elected by the Plan Sponsor in 11.01 of the Adoption Agreement, the Plan Sponsor reserves the right to terminate the Plan and distribute all amounts credited to all Participant Accounts within the 30 days preceding or the twelve months following a Change in Control as determined in accordance with the rules set forth in Section 9.7. For this purpose, the Plan will be treated as terminated only if all agreements, methods, programs and other arrangements sponsored by the Related Employer immediately after the Change in Control which are treated as a single plan under Treas. Reg. § 1.409A-1(c)(2) are also terminated so that all Participants under the Plan and all similar arrangements are required to receive all amounts deferred under the terminated arrangements within twelve months of the date the Plan Sponsor irrevocably takes all necessary action to terminate the arrangements. In addition, the Plan Sponsor reserves the right to terminate the Plan within twelve months of a corporate dissolution taxed under Code Section 331 or with the approval of a bankruptcy court pursuant to 11 U. S. C. Section 503(b)(1)(A) provided that amounts deferred under the Plan are included in the gross incomes of Participants in the latest of (a) the calendar year in which the termination and liquidation occurs, (b) the first calendar year in which the amount is no longer subject to a substantial risk of forfeiture, or (c) the first calendar year in which payment is administratively practicable.

### ***10.3. Other Plan Terminations***

The Plan Sponsor retains the discretion to terminate the Plan if (a) all arrangements sponsored by the Plan Sponsor that would be aggregated with any terminated arrangement under Code Section 409A and Treas. Reg. § 1.409A-1(c)(2) are terminated, (b) no payments other than payments that would be payable under the terms of the arrangements if the termination had not occurred are made within twelve months of the termination of the arrangements, (c) all payments are made within twenty-four months of the date the Plan Sponsor takes all necessary action to irrevocably terminate and liquidate the arrangements, (d) the Plan Sponsor does not adopt a new arrangement that would be aggregated with any terminated arrangement under Code Section 409A and the regulations thereunder at any time within the three year period following the date of termination of the arrangement, and (e) the termination does not occur proximate to a downturn in the financial health of the Plan Sponsor. The Plan Sponsor also reserves the right to amend the Plan to provide that termination of the Plan will occur under such conditions and events as may be prescribed by the Secretary of the Treasury in generally applicable guidance published in the Internal Revenue Bulletin.

## **Article 11 - The Trust**

### ***11.1. Establishment of Trust***

The Plan Sponsor may but is not required to establish a trust to hold amounts which the Plan Sponsor may contribute from time to time to correspond to some or all amounts credited to Participants under Section 6.2. In the event that the Plan Sponsor wishes to establish a trust to provide a source of funds for the payment of Plan benefits, any such trust shall be constructed to constitute an unfunded arrangement that does not affect the status of the Plan as an unfunded plan for purposes of Title I of ERISA and the Code. If the Plan Sponsor elects to establish a trust in accordance with Section 10.01 of the Adoption Agreement, the provisions of Sections 11.2 and 11.3 shall become operative.

### ***11.2. Trust***

Any trust established by the Plan Sponsor shall be between the Plan Sponsor and a trustee pursuant to a separate written agreement under which assets are held, administered and managed, subject to the claims of the Plan Sponsor's creditors in the event of the Plan Sponsor's insolvency. The Plan Sponsor must notify the trustee in the event of a bankruptcy or insolvency.

### ***11.3. Investment of Trust Funds***

Any amounts contributed to the trust by the Plan Sponsor shall be invested by the trustee in accordance with the provisions of the trust and the instructions of the Administrator. Trust investments need not reflect the hypothetical investments selected by Participants under Section 7.1 for the purpose of adjusting Accounts and the earnings or investment results of the trust need not affect the hypothetical investment adjustments to Participant Accounts under the Plan.

## Article 12 - Plan Administration

### ***12.1. Powers and Responsibilities of the Administrator***

The Administrator has the full power and the full responsibility to administer the Plan in all of its details; subject, however, to the applicable requirements of ERISA. The Administrator's powers and responsibilities include, but are not limited to, the following:

- (a) To make and enforce such rules and procedures as it deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, its interpretation thereof to be final, except as provided in Section 12.2, on all persons claiming benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) To administer the claims and review procedures specified in Section 12.2;
- (e) To compute the amount of benefits which will be payable to any Participant, former Participant or Beneficiary in accordance with the provisions of the Plan;
- (f) To determine the person or persons to whom such benefits will be paid;
- (g) To authorize the payment of benefits;
- (h) To make corrections and recover the overpayment of any benefits;
- (i) To comply with the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA;
- (j) To appoint such agents, counsel, accountants, and consultants as may be required to assist in administering the Plan;
- (k) By written instrument, to allocate and delegate its responsibilities, including the formation of an Administrative Committee to administer the Plan.

## **12.2. Claims and Review Procedures**

- (a) Claims Procedure. If any person believes he or she is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person of its decision in writing. Such notification will contain (i) specific reasons for the denial, (ii) specific reference to pertinent Plan provisions, (iii) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and (iv) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the person's right to bring a civil action following an adverse decision on review. If the claim involves a Disability, the denial must also include the standards that governed the decision, including the basis for disagreeing with any health care professionals, vocational professionals or the Social Security Administration as well as an explanation of the scientific or clinical judgement underlying the denial. Such notification will be given within 90 days (45 days in the case of a claim regarding Disability) after the claim is received by the Administrator. The Administrator may extend the period for providing the notification by 90 days (30 days in the case of a claim regarding Disability, which may be extended an additional 30 days) if special circumstances require an extension of time for processing the claim and if written notice of such extension and circumstance is given to such person within the initial 90 day period (45 day period in the case of a claim regarding Disability). If such notification is not given within such period, the claim will be considered denied as of the last day of such period and such person may request a review of his or her claim.
- (b) Review Procedure. Within 60 days (180 days in the case of a claim regarding Disability) after the date on which a person receives a written notification of denial of claim (or, if written notification is not provided, within 60 days (180 days in the case of a claim regarding Disability) of the date denial is considered to have occurred), such person (or his or her duly authorized representative) may (i) file a written request with the Administrator for a review of his or her denied claim and of pertinent documents and (ii) submit written issues and comments to the Administrator. The Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The notification will explain that the person is entitled to receive, upon request and free of charge, reasonable access to and copies of all pertinent documents and has the right to bring a civil action following an adverse decision on review. The decision on review will be made within 60 days (45 days in the case of a claim regarding Disability). The Administrator may extend the period for making the decision on review by 60 days (45 days in the case of a claim regarding Disability) if special circumstances require an extension of time for processing the request such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period (45 days in the case of a claim regarding Disability). If the decision on review is not made within such period, the claim will be considered denied.

If the claim is regarding Disability, and the determination of Disability has not been made by the Social Security Administration, the Railroad Retirement Board, or under the Plan Sponsor's long-term disability plan, the person may, upon written request and free of charge, also receive the identification of medical or vocational experts whose advice was obtained in connection with the denial of a claim regarding Disability, even if the advice was not relied upon.

Before issuing any decision with respect to a claim involving Disability, the Administrator will provide to the person, free of charge, the following information as soon as possible and sufficiently in advance of the date on which the response is required to be provided to the person to allow the person a reasonable opportunity to respond prior to the due date of the response:

- (i) Any new or additional evidence considered, relied upon, or generated by the Administrator or other person making the decision; and
  - (ii) A new or addition rationale if the decision will be based on that rationale.
- (c) Exhaustion of Claims Procedures and Right to Bring Legal Claim. No action at law or equity shall be brought more than one year after the Administrator's affirmation of a denial of a claim, or, if earlier, more than four years after the facts or events giving rising to the claimant's allegation(s) or claim(s) first occurred.

### **12.3. Plan Administrative Costs**

All reasonable costs and expenses (including legal, accounting, and employee communication fees) incurred by the Administrator in administering the Plan shall be paid by the Plan to the extent not paid by the Employer.



## **Article 13 - Miscellaneous**

### ***13.1. Unsecured General Creditor of the Employer***

Participants and their Beneficiaries, heirs, successors, and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Employer. For purposes of the payment of benefits under the Plan, any and all of the Employer's assets shall be, and shall remain, the general, unpledged, unrestricted assets of the Employer. Each Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

### ***13.2. Employer's Liability***

Each Employer's liability for the payment of benefits under the Plan shall be defined only by the Plan and by the deferral agreements entered into between a Participant and the Employer. An Employer shall have no obligation or liability to a Participant under the Plan except as provided by the Plan and a deferral agreement or agreements. An Employer shall have no liability to Participants employed by other Employers.

### ***13.3. Limitation of Rights***

Neither the establishment of the Plan, nor any amendment thereof, nor the creation of any fund or account, nor the payment of any benefits, will be construed as giving to the Participant or any other person any legal or equitable right against the Employer, the Plan or the Administrator, except as provided herein; and in no event will the terms of employment or service of the Participant be modified or in any way affected hereby.

### ***13.4. Anti-Assignment***

Except as may be necessary to fulfill a domestic relations order within the meaning of Code Section 414(p), none of the benefits or rights of a Participant or any Beneficiary of a Participant shall be subject to the claim of any creditor. In particular, to the fullest extent permitted by law, all such benefits and rights shall be free from attachment, garnishment, or any other legal or equitable process available to any creditor of the Participant and his or her Beneficiary. Neither the Participant nor his or her Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber, or assign any of the payments which he or she may expect to receive, contingently or otherwise, under the Plan, except the right to designate a Beneficiary to receive death benefits provided hereunder. Notwithstanding the preceding, the benefit payable from a Participant's Account may be reduced, at the discretion of the Administrator, to satisfy any debt or liability to the Employer.

### ***13.5. Facility of Payment***

If the Administrator determines, on the basis of medical reports or other evidence satisfactory to the Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his or her affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Employer to disburse such payments to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under State law for the care and control of such recipient. The receipt by such person or institution of any such payments therefore, and any such payment to the extent thereof, shall discharge the liability of the Employer, the Plan and the Administrator for the payment of benefits hereunder to such recipient.

### ***13.6. Notices***

Any notice or other communication to the Employer or Administrator in connection with the Plan shall be deemed delivered in writing if addressed to the Plan Sponsor at the address specified in Section 1.03 of the Adoption Agreement and if either actually delivered at said address or, in the case of a letter, five business days shall have elapsed after the same

shall have been deposited in the United States mails, first-class postage prepaid and registered or certified.

### **13.7. Tax Withholding**

If the Employer concludes that tax is owing with respect to any deferral or payment hereunder, the Employer shall withhold such amounts from any payments due the Participant or from amounts deferred, as permitted by law, or otherwise make appropriate arrangements with the Participant or his or her Beneficiary for satisfaction of such obligation. Tax, for purposes of this Section 13.7 means any federal, state, local or any other governmental income tax, employment or payroll tax, excise tax, or any other tax or assessment owing with respect to amounts deferred, any earnings thereon, and any payments made to Participants under the Plan.

### **13.8. Indemnification**

- (a) Each Indemnitee (as defined in Section 13.8(e)) shall be indemnified and held harmless by the Employer for all actions taken by him or her and for all failures to take action (regardless of the date of any such action or failure to take action), to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated, against all expense, liability, and loss (including, without limitation, attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding (as defined in subsection (e)). No indemnification pursuant to this Section shall be made, however, in any case where (1) the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness or (2) there is a settlement to which the Employer does not consent.
- (b) The right to indemnification provided in this Section shall include the right to have the expenses incurred by the Indemnitee in defending any Proceeding paid by the Employer in advance of the final disposition of the Proceeding, to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated; provided that, if such law requires, the payment of such expenses incurred by the Indemnitee in advance of the final disposition of a Proceeding shall be made only on delivery to the Employer of an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced without interest if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified under this Section or otherwise.
- (c) Indemnification pursuant to this Section shall continue as to an Indemnitee who has ceased to be such and shall inure to the benefit of his or her heirs, executors, and administrators. The Employer agrees that the undertakings made in this Section shall be binding on its successors or assigns and shall survive the termination, amendment, or restatement of the Plan.
- (d) The foregoing right to indemnification shall be in addition to such other rights as the Indemnitee may enjoy as a matter of law or by reason of insurance coverage of any kind and is in addition to and not in lieu of any rights to indemnification to which the Indemnitee may be entitled pursuant to the by-laws of the Employer.
- (e) For the purposes of this Section, the following definitions shall apply:
  - (i) "Indemnitee" shall mean each person serving as an Administrator (or any other person who is an employee, Director, or officer of the Employer) who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding, by reason of the fact that he or she is or was performing administrative functions under the Plan.
  - (ii) "Proceeding" shall mean any threatened, pending, or completed action, suit, or proceeding (including, without limitation, an action, suit, or proceeding by

or in the right of the Employer), whether civil, criminal, administrative, investigative, or through arbitration.

### ***13.9. Successors***

The provisions of the Plan shall bind and inure to the benefit of the Plan Sponsor, the Employer and their successors and assigns and the Participant and the Participant's designated Beneficiaries.

### ***13.10. Disclaimer***

It is the Plan Sponsor's intention that the Plan comply with the requirements of Code Section 409A. Neither the Plan Sponsor nor the Employer shall have any liability to any Participant should any provision of the Plan fail to satisfy the requirements of Code Section 409A.

### ***13.11. Governing Law***

The Plan will be construed, administered, and enforced according to the laws of the State specified by the Plan Sponsor in Section 12.01 of the Adoption Agreement.

## SUBSIDIARIES OF THE REGISTRANT

The following is a list of significant and other subsidiaries of Pure Storage, Inc.

| <b>Name of Subsidiary</b>   | <b>Jurisdiction of Incorporation or Organization</b> |
|---|--|
| Portworx Inc.   | Delaware   |
| Pure Crowns Sweden Holding AB   | Sweden   |
| Pure Storage Australia Pty Ltd  | Australia  |
| Pure Storage Austria, GmbH  | Austria  |
| Pure Storage Belgium BVBA   | Belgium  |
| Pure Storage do Brasil Solucoes e Servicos de Armazenamento de Dados Ltda | Brazil   |
| Pure Storage Canada Limited   | Canada   |
| Pure Storage Denmark ApS  | Denmark  |
| Pure Storage Czech Republic s.r.o.  | Czech Republic                                       |
| Pure Storage France SARL  | France   |
| Pure Storage Germany GmbH   | Germany  |
| Pure Storage Holdings, Inc.   | Delaware   |
| Pure Storage HK Ltd   | Hong Kong  |
| Pure Storage India Private Limited  | India  |
| Pure Storage International, Inc.  | Delaware   |
| Pure Storage International Limited  | Ireland  |
| Pure Storage Italy SRL  | Italy  |
| Pure Storage Japan KK   | Japan  |
| Pure Storage Korea Co Ltd   | South Korea  |
| Pure Storage LLC  | Delaware   |
| Pure Storage Malaysia SDN BHD   | Malaysia   |
| Pure Storage S. de R.L. de C.V.   | Mexico   |
| Pure Storage Netherlands BV   | Netherlands  |
| Pure Storage New Zealand Limited  | New Zealand  |
| Pure Storage Poland sp. z o.o.  | Poland   |
| Pure Storage Singapore Pte Ltd  | Singapore  |
| Pure Storage South Africa (Pty) Ltd                                       | South Africa   |
| Pure Storage Spain, SLU   | Spain  |
| Pure Storage Sweden AB  | Sweden   |
| Pure Storage Switzerland GmbH   | Switzerland  |
| Pure Storage Bilgi Teknolojileri Limited Şirketi                          | Turkey   |
| Pure Storage UK Ltd   | United Kingdom                                       |

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-207315, 333-210417, 333-220396, 333-223927, 333-230248, 333-233587, 333-237418, 333-249199, 333-254682, and 333-264166 on Form S-8 of our reports dated March 31, 2023, relating to the consolidated financial statements of Pure Storage, Inc. and subsidiaries (the "Company"), and the effectiveness of the Company's internal control over financial reporting, appearing in this Annual Report on Form 10-K for the year ended February 5, 2023.

*/S/ DELOITTE & TOUCHE LLP*

San Jose, California

March 31, 2023

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO  
EXCHANGE RULES 13a-14(a) AND 15d-14(a),  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Charles H. Giancarlo, certify that:

1. I have reviewed this Annual Report on Form 10-K of Pure Storage, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting

Date: March 31, 2023

By: /s/ Charles H. Giancarlo  
**Charles H. Giancarlo**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO  
EXCHANGE RULES 13a-14(a) AND 15d-14(a),  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kevan Kryslar, certify that:

1. I have reviewed this Annual Report on Form 10-K of Pure Storage, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2023

By: /s/ Kevan Kryslar

**Kevan Kryslar  
Chief Financial Officer  
(Principal Financial Officer)**

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Charles H. Giancarlo, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report on Form 10-K of Pure Storage, Inc. for the fiscal year ended February 5, 2023, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Pure Storage, Inc.

Date: March 31, 2023 By: /s/ Charles H. Giancarlo  
**Charles H. Giancarlo**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

I, Kevan Kryslar, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report on Form 10-K of Pure Storage, Inc. for the fiscal year ended February 5, 2023, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Pure Storage, Inc.

Date: March 31, 2023 By: /s/ Kevan Kryslar  
**Kevan Kryslar**  
**Chief Financial Officer**  
**(Principal Financial Officer)**

*The foregoing certifications are not deemed filed with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), and are not to be incorporated by reference into any filing of Pure Storage, Inc. under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.*