

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

**FORM 10-K**

- Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
for the fiscal year ended March 31, 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: 001-32253

**ENERSYS**

(Exact name of registrant as specified in its charter)

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

**23-3058564**  
(I.R.S. Employer  
Identification No.)

**2366 Bernville Road  
Reading, Pennsylvania 19605**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: 610-208-1991**

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

<b>Title of each class</b>	<b>Trading Symbol</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.01 par value per share	ENS	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 Section 15(d) of the Act.  Yes  No

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

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

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

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

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.  Yes  No

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

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

State the aggregate market value of the voting and non-voting common equity held by non-affiliates at **October 2, 2022**: \$2,374,598,929 (1) (based upon its closing transaction price on the New York Stock Exchange on October 2, 2022).

(1) For this purpose only, "non-affiliates" excludes directors and executive officers.

**Common stock outstanding at May 19, 2023:** **40,909,454 Shares of Common Stock**

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement for its Annual Meeting of Stockholders to be held on or about August 3, 2023 are incorporated by reference in Part III of this Annual Report.

## **CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

The Private Securities Litigation Reform Act of 1995 (the “Reform Act”) provides a safe harbor for forward-looking statements made by or on behalf of EnerSys. EnerSys and its representatives may, from time to time, make written or verbal forward-looking statements, including statements contained in EnerSys’ filings with the Securities and Exchange Commission (“SEC”) and its reports to stockholders. Generally, the inclusion of the words “anticipate,” “believe,” “expect,” “future,” “intend,” “estimate,” “will,” “plans,” or the negative of such terms and similar expressions identify statements that constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 and that are intended to come within the safe harbor protection provided by those sections. All statements addressing operating performance, events, or developments that EnerSys expects or anticipates will occur in the future, including statements relating to sales growth, earnings or earnings per share growth, and market share, as well as statements expressing optimism or pessimism about future operating results, are forward-looking statements within the meaning of the Reform Act. The forward-looking statements are and will be based on management’s then-current beliefs and assumptions regarding future events and operating performance and on information currently available to management, and are applicable only as of the dates of such statements.

Forward-looking statements involve risks, uncertainties and assumptions. Although we do not make forward-looking statements unless we believe we have a reasonable basis for doing so, we cannot guarantee their accuracy. Actual results may differ materially from those expressed in these forward-looking statements due to a number of uncertainties and risks, including the risks described in this Annual Report on Form 10-K and other unforeseen risks. You should not put undue reliance on any forward-looking statements. These statements speak only as of the date of this Annual Report on Form 10-K, even if subsequently made available by us on our website or otherwise, and we undertake no obligation to update or revise these statements to reflect events or circumstances occurring after the date of this Annual Report on Form 10-K.

Our actual results may differ materially from those contemplated by the forward-looking statements for a number of reasons, including the following factors:

- economic, financial and other impacts of the COVID-19 pandemic, global supply chain disruptions, and labor shortages;
- general cyclical patterns of the industries in which our customers operate;
- global economic trends, competition and geopolitical risks, including impacts from the ongoing conflict between Russia and Ukraine and the related sanctions and other measures, changes in the rates of investment or economic growth in key markets we serve, or an escalation of sanctions, tariffs or other trade tensions between the U.S. and China or other countries, and related impacts on our global supply chains and strategies;
- the extent to which we cannot control our fixed and variable costs;
- the raw materials in our products may experience significant fluctuations in market price and availability;
- certain raw materials constitute hazardous materials that may give rise to costly environmental and safety claims;
- legislation regarding the restriction of the use of energy or certain hazardous substances in our products;
- risks involved in our operations such as supply chain issues, disruption of markets, changes in import and export laws, environmental regulations, currency restrictions and local currency exchange rate fluctuations;
- our ability to raise our selling prices to our customers when our product costs increase;
- the extent to which we are able to efficiently utilize our global manufacturing facilities and optimize our capacity;
- changes in macroeconomic and market conditions and market volatility, including inflation, interest rates, the value of securities and other financial assets, transportation costs, costs and availability of electronic components, lead, plastic resins, steel, copper and other commodities used by us, and the impact of such changes and volatility on our financial position and business;
- competitiveness of the battery markets and other energy solutions for industrial applications throughout the world;
- our timely development of competitive new products and product enhancements in a changing environment and the acceptance of such products and product enhancements by customers;
- our ability to adequately protect our proprietary intellectual property, technology and brand names;
- litigation and regulatory proceedings to which we might be subject;
- our expectations concerning indemnification obligations;
- changes in our market share in the business segments where we operate;
- our ability to implement our cost reduction initiatives successfully and improve our profitability;
- quality problems associated with our products;
- our ability to implement business strategies, including our acquisition strategy, manufacturing expansion and restructuring plans;
- our acquisition strategy may not be successful in locating advantageous targets;

- our ability to successfully integrate any assets, liabilities, customers, systems and management personnel we acquire into our operations and our ability to realize related revenue synergies, strategic gains, and cost savings may be significantly harder to achieve, if at all, or may take longer to achieve;
- potential goodwill impairment charges, future impairment charges and fluctuations in the fair values of reporting units or of assets in the event projected financial results are not achieved within expected time frames;
- our debt and debt service requirements which may restrict our operational and financial flexibility, as well as imposing unfavorable interest and financing costs;
- our ability to maintain our existing credit facilities or obtain satisfactory new credit facilities or other borrowings;
- adverse changes in our short and long-term debt levels under our credit facilities;
- our exposure to fluctuations in interest rates on our variable-rate debt;
- our ability to attract and retain qualified management and personnel;
- our ability to maintain good relations with labor unions;
- credit risk associated with our customers, including risk of insolvency and bankruptcy;
- our ability to successfully recover in the event of a disaster affecting our infrastructure, supply chain, or our facilities;
- delays or cancellations in shipments;
- occurrence of natural or man-made disasters or calamities, including health emergencies, the spread of infectious diseases, pandemics, vaccine mandates, outbreaks of hostilities or terrorist acts, or the effects of climate change, and our ability to deal effectively with damages or disruptions caused by the foregoing; and
- the operation, capacity and security of our information systems and infrastructure.

This list of factors that may affect future performance is illustrative, but by no means exhaustive. Accordingly, all forward-looking statements should be evaluated with the understanding of their inherent uncertainty.

**EnerSys**  
**Annual Report on Form 10-K**  
**For the Fiscal Year Ended March 31, 2023**

**Index**

	<b>Page</b>
<b>PART I</b>	
<a href="#"><u>Cautionary Note Regarding Forward-Looking Statements</u></a>	3
Item 1. <a href="#"><u>Business</u></a>	6
Item 1A. <a href="#"><u>Risk Factors</u></a>	14
Item 1B. <a href="#"><u>Unresolved Staff Comments</u></a>	26
Item 2. <a href="#"><u>Properties</u></a>	27
Item 3. <a href="#"><u>Legal Proceedings</u></a>	27
Item 4. <a href="#"><u>Mine Safety Disclosures</u></a>	27
<b>PART II</b>	
Item 5. <a href="#"><u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u></a>	28
Item 6. <a href="#"><u>Selected Financial Data</u></a>	30
Item 7. <a href="#"><u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u></a>	31
Item 7A. <a href="#"><u>Quantitative and Qualitative Disclosures About Market Risk</u></a>	49
Item 8. <a href="#"><u>Financial Statements and Supplementary Data</u></a>	51
Item 9. <a href="#"><u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u></a>	103
Item 9A. <a href="#"><u>Controls and Procedures</u></a>	103
Item 9B. <a href="#"><u>Other Information</u></a>	103
Item 9C. <a href="#"><u>Disclosure regarding foreign jurisdictions that prevent inspections</u></a>	103
<b>PART III</b>	
Item 10. <a href="#"><u>Directors, Executive Officers and Corporate Governance</u></a>	104
Item 11. <a href="#"><u>Executive Compensation</u></a>	104
Item 12. <a href="#"><u>Security Ownership of Certain Beneficial Owners and Management Related Stockholder Matters</u></a>	104
Item 13. <a href="#"><u>Certain Relationships and Related Transactions, and Director Independence</u></a>	104
Item 14. <a href="#"><u>Principal Accounting Fees and Services</u></a>	105
<b>PART IV</b>	
Item 15. <a href="#"><u>Exhibits, Financial Statement Schedules</u></a>	106
<a href="#"><u>Signatures</u></a>	110

## PART I

### ITEM 1. BUSINESS

#### Overview

EnerSys (the “Company,” “we,” or “us”) is a world leader in energy storage and power solutions for industrial applications. We design, manufacture, and distribute energy systems solutions, motive power batteries, specialty batteries, battery chargers, power equipment, battery accessories and outdoor thermal equipment enclosures solutions for a global customer base. Energy Systems, which combine power conversion, power distribution, energy storage, and thermally managed enclosures, are used in the telecommunication, broadband, data center, and utility industries, for uninterruptible power and numerous other applications requiring stored energy solutions. Motive Power batteries and chargers are utilized in electric forklift trucks, automated guided vehicles, and other industrial electric powered vehicles. Specialty batteries are used in aerospace and defense applications, large over the road trucks, and premium automotive and medical. We also provide aftermarket and customer support services to over 10,000 customers in more than 100 countries through a network of distributors, independent representatives, and our internal sales force around the world.

The Company's chief operating decision maker, or CODM (the Company's Chief Executive Officer), reviews financial information for purposes of assessing business performance and allocating resources, by focusing on the lines of business on a global basis. The Company identifies the following as its three operating segments, based on lines of business:

The Company's three reportable segments, based on lines of business, are as follows:

- **Energy Systems** - uninterruptible power systems, or “UPS” applications for computer and computer-controlled systems used in data centers, as well as telecommunications systems, switchgear and electrical control systems used in industrial facilities and electric utilities, large-scale energy storage and energy pipelines. Energy Systems also includes highly integrated power solutions and services to broadband, telecom, renewable and industrial customers, as well as thermally managed cabinets and enclosures for electronic equipment and batteries.
- **Motive Power** - power for electric industrial forklifts used in manufacturing, warehousing and other material handling applications as well as mining equipment, diesel locomotive starting and other rail equipment; and
- **Specialty** - premium batteries for starting, lighting and ignition applications in premium automotive and large over-the-road trucks, energy storage solutions for satellites, military land vehicles, aircraft, submarines, tactical vehicles, as well as medical devices and equipment.

See Note 23 to the Consolidated Financial Statements for information on segment reporting.

#### Fiscal Year Reporting

In this Annual Report on Form 10-K, when we refer to our fiscal years, we state “fiscal” and the year, as in “fiscal 2023”, which refers to our fiscal year ended March 31, 2023. The Company reports interim financial information for 13-week periods, except for the first quarter, which always begins on April 1, and the fourth quarter, which always ends on March 31. The four quarters in fiscal 2023 ended on July 3, 2022, October 2, 2022, January 1, 2023, and March 31, 2023, respectively. The four quarters in fiscal 2022 ended on July 4, 2021, October 3, 2021, January 2, 2022, and March 31, 2022, respectively.

#### History

EnerSys and its predecessor companies have been manufacturers of industrial batteries for over 125 years. Morgan Stanley Capital Partners teamed with the management of Yuasa, Inc. in late 2000 to acquire from Yuasa Corporation (Japan) its reserve power and motive power battery businesses in North and South America. We were incorporated in October 2000 for the purpose of completing the Yuasa, Inc. acquisition. On January 1, 2001, we changed our name from Yuasa, Inc. to EnerSys to reflect our focus on the energy systems nature of our businesses.

In 2004, EnerSys completed its initial public offering (the “IPO”) and the Company’s common stock commenced trading on the New York Stock Exchange, under the trading symbol “ENS”.

## Key Developments

There have been several key stages in the development of our business, which explain to a significant degree our results of operations over the past several years.

In March 2002, we acquired the reserve power and motive power business of the Energy Storage Group of Invensys plc. ("ESGI"). Our successful integration of ESGI provided global scale in both the reserve and motive power markets. The ESGI acquisition also provided us with a further opportunity to reduce costs and improve operating efficiency.

Between fiscal years 2003 through 2023, we made thirty-four acquisitions around the globe. There were no acquisitions in fiscal 2023, 2022 and 2021 but we completed the acquisition of NorthStar, headquartered in Stockholm, Sweden in fiscal 2020 and of Alpha in fiscal 2019.

## Our Customers

We serve over 10,000 customers in over 100 countries, on a direct basis or through our distributors. We are not overly dependent on any particular end market. Our customer base is highly diverse, and no single customer accounts for more than 10% of our revenues.

Our Energy Systems customers consist of both global and regional customers. These customers are in diverse markets including telecommunication and broadband services, data centers, electric utilities, emergency lighting, renewable energy, and industrial utilities.

Our Motive Power products are sold to a large, diversified customer base. These customers include material handling equipment dealers, forklift and heavy truck original equipment manufacturers ("OEMs") and end users of such equipment. End users include manufacturers, distributors, warehouse operators, retailers, airports, mine operators and railroads.

Our Specialty products are utilized in transportation, primarily in premium automotive and large over-the-road trucking, aerospace and defense and medical markets. The products are sold globally to OEMs, distribution partners, vehicle fleets and directly to government entities such as the United States of America, Germany and the United Kingdom.

## Distribution and Services

We distribute, sell and service our products throughout the world, principally through company-owned sales and service facilities, as well as through independent manufacturers' representatives. Our company-owned network allows us to offer high-quality service, including preventative maintenance programs and customer support. Our warehouses and service locations enable us to respond quickly to customers in the markets we serve. We believe that the extensive industry experience of our sales organization results in strong long-term customer relationships.

## Manufacturing and Raw Materials

We manufacture and assemble our products at manufacturing facilities located in the Americas, EMEA and Asia. With a view toward projected demand, we strive to optimize and balance capacity at our battery manufacturing facilities globally, while simultaneously minimizing our product cost. By taking a global view of our manufacturing requirements and capacity, we believe we are better able to anticipate potential capacity bottlenecks and equipment and capital funding needs.

The primary raw materials used to manufacture our products include lead, plastics, steel and copper. We purchase lead from a number of leading suppliers throughout the world. Because lead is traded on the world's commodity markets and its price fluctuates daily, we periodically enter into hedging arrangements for a portion of our projected requirements to reduce the volatility of our costs.

## Competition

The industrial energy storage market is highly competitive both among competitors who manufacture and sell industrial energy storage solutions and batteries and among customers who purchase industrial energy solutions. Our competitors range from development stage companies to large domestic and international corporations. Certain of our competitors produce energy storage products utilizing technologies or chemistries different from our own. We compete primarily on the basis of reputation, product quality, reliability of service, delivery lead time and price. We believe that our products and services are competitively priced.

### *Energy Systems*

We compete principally with East Penn Manufacturing, Exide Technologies (Stryten), Fiamm, SAFT, New Power, C&D Technologies Inc., Vertiv, ABB, Amphenol, Eltek (a Delta Group company), as well as Chinese producers.

### *Motive Power*

Our primary global competitors in traditional lead-acid include East Penn Manufacturing, Exide Technologies (Stryten), Hoppecke, Eternity, Midac, Sunlight and TAB, as well as a number of domestic Chinese manufacturers.

Additionally, while lithium-ion battery technology in the motive power space has traditionally been relegated to smaller material handling applications, we have seen the entrance of a number of companies into larger battery types, acting as lithium cell packagers or integrators of cells sourced primarily from Asia. The integrators include forklift original equipment manufacturers either directly or through partnership with other entities.

### *Specialty*

We compete globally within the transportation, aerospace and defense markets and specialized lithium technologies used in these critical applications. Our thin plate pure lead (TPPL) technology is a significant player in the applications using absorbed glass materials (AGM). Our major competitors in AGM technology are Clarios, East Penn Manufacturing, Exide Technologies (Stryten), Fiamm, Banner and Atlas. In the Aerospace and Defense specialized markets our main competitors are Eagle Picher and SAFT.

## **Warranties**

Warranties for our products vary geographically and by product type and are competitive with other suppliers of these types of products. Generally, our Energy Systems product warranties range from one to twenty years, our Motive Power product warranties range from one to five years and from one to four years for Specialty transportation batteries. The length of our warranties is varied to reflect regional characteristics and competitive influences. In some cases, our warranty period may include a pro rata period, which is typically based around the design life of the product and the application served. Our warranties generally cover defects in workmanship and materials and are limited to specific usage parameters.

## **Intellectual Property**

We have numerous patents and patent licenses in the United States and other jurisdictions but do not consider any one patent to be material to our business. From time to time, we apply for patents on new inventions and designs, but we believe that the growth of our business will depend primarily upon the quality of our products and our relationships with our customers, rather than the extent of our patent protection.

We believe we are the leader in TPPL technology. We believe that a significant capital investment would be required by any party desiring to produce products using TPPL technology for our markets.

We own or possess exclusive and non-exclusive licenses and other rights to use a number of trademarks in various jurisdictions. We have obtained registrations for many of these trademarks in the United States and other jurisdictions. Our various trademark registrations currently have durations of approximately 10 to 20 years, varying by mark and jurisdiction of registration and may be renewable. We endeavor to keep all of our material registrations current. We believe that many such rights and licenses are important to our business by helping to develop strong brand-name recognition in the marketplace.

## Seasonality

Our business generally does not experience significant quarterly fluctuations in net sales as a result of weather or other trends that can be directly linked to seasonality patterns, although transportation and power electronics can experience seasonality in colder months. Despite that, historically our fourth quarter is our best quarter with higher revenues and generally more working days while our second quarter is the weakest due to the summer holiday season in Western Europe and North America.

## Product and Process Development

Our product and process development efforts are focused on the creation of new energy storage products, and integrated power systems and controls. We allocate our resources to the following key areas:

- the design and development of new products;
- optimizing and expanding our existing product offering;
- waste and scrap reduction;
- production efficiency and utilization;
- capacity expansion without additional facilities; and
- quality attribute maximization.

## Employees

At March 31, 2023, we had approximately 11,350 employees. Of these employees, approximately 26% were covered by collective bargaining agreements. Employees covered by collective bargaining agreements that expire in the next twelve months were approximately 9% of the total workforce. The average term of these agreements is 2 years, with the longest term being 4.0 years. We consider our employee relations to be good. We did not experience any significant labor unrest or disruption of production during fiscal 2023.

## Information about Our Executive Officers

As of May 24, 2023, our executive officers are:

David M. Shaffer, age 58, *President and Chief Executive Officer*. Mr. Shaffer has been a director of EnerSys and has served as our President and Chief Executive Officer since April 2016. Prior thereto, he served as President and Chief Operating Officer since November 2014. From January 2013 through October 2014, he served as our President-EMEA. From 2008 to 2013, Mr. Shaffer was our President-Asia. Prior thereto he was responsible for our telecommunications sales in the Americas. Mr. Shaffer joined EnerSys in 2005 and has worked in various roles of increasing responsibility in the industry since 1989. Mr. Shaffer received his Masters of Business Administration degree from Marquette University and his Bachelor of Science degree in Mechanical Engineering from the University of Illinois.

Andrea J. Funk, age 53, *Executive Vice President and Chief Financial Officer*. Ms. Funk joined EnerSys in December 2018 and served as Vice President Finance, Americas. She was promoted to Executive Vice President & Chief Financial Officer effective April 1, 2022. Ms. Funk holds a Master of Business Administration degree from The Wharton School of Business, and a Bachelor of Science degree in accounting from Villanova University and was a certified public accountant. Previously, Ms. Funk served as Chief Financial Officer and then Chief Executive Officer of Cambridge Lee Industries LLC from 2010-2018. Prior, she served in positions of increasing responsibility at Carpenter Technology, Arrow International, Rhone-Poulenc Rorer, Bell Atlantic Corporation and Ernst & Young. Since July 2017, Ms. Funk has served on the Board of Directors of Crown Holdings Inc., whose shares are traded on the New York Stock Exchange, and is a member of their Audit and Compensation Committees.

Joern Tinnemeyer, age 50, *Senior Vice President and Chief Technology Officer*. Mr. Tinnemeyer has served as Senior Vice President and Chief Technology Officer since October 2017. He joined EnerSys in August 2016 as its Vice President and Chief Technology Officer. Mr. Tinnemeyer is responsible for global engineering, global quality, and technology development. His primary focus of expertise includes energy storage systems, system design optimization, safety topologies and control theory. He has worked on some of the most advanced lithium battery packs for major automotive OEMs. He currently also serves as Chairman of NaatBatt, North America's foremost organization to foster advanced energy storage systems. Mr. Tinnemeyer studied applied mathematics and electrical engineering at the University of Toronto and holds a MSc in Astronautics and Space Engineering.

Shawn M. O'Connell, age 50, *President, Motive Power Global*. Mr. O'Connell has served as our President, Motive Power Global since July 2020. Prior thereto, from April 2019 through July 2020, he served as our President, Motive Power, our Vice President—Reserve Power Sales and Service for the Americas from February 2017, and Vice President of EnerSys Advanced Systems from December 2015 to January 2017. Mr. O'Connell joined EnerSys in 2011, serving in various sales and marketing capacities in several areas of our business. Mr. O'Connell received his Master of Business Administration degree in International Business from the University of Redlands, CA and his Bachelor of Arts degree in English Literature from the California State University, San Bernardino. Mr. O'Connell is a veteran of the U.S. Army's 82nd Airborne Division (Paratroopers) where he served as a Signals Intelligence Analyst, Spanish Linguist, and held a Top-Secret security clearance.

Andrew M. Zogby, age 63, *President, Energy Systems Global*. Mr. Zogby has served as President, Energy Systems Global since July 2020. Prior thereto, from April 2019, he served as President, Energy Systems—Americas. He joined EnerSys upon completion of the acquisition of Alpha Technologies in December 2018. Mr. Zogby served as President of Alpha Technologies since 2008 and brings over 30 years of experience in global broadband, telecommunications and renewable energy industries. He has held corporate leadership positions with several leading technology firms. Mr. Zogby received his Bachelor of Science degree in Industrial and Labor Relations from LeMoyne College, Syracuse, New York, and his Master of Business Administration degree from Duke University's Fuqua School of Business. He is active in the US Chamber of Commerce, and serves on the C\_TEC, Chamber Technology Engagement Center Committee.

## **Environmental Matters and Climate Change Impacts**

We are committed to the protection of the environment and train our employees to perform their duties accordingly. In the manufacture of our products throughout the world, we process, store, dispose of and otherwise use large amounts of hazardous materials, especially lead and acid. As a result, we are subject to extensive and evolving environmental, health and safety laws and regulations governing, among other things: the generation, handling, storage, use, transportation and disposal of hazardous materials; emissions or discharges of hazardous materials into the ground, air or water; and the health and safety of our employees. In addition, we are required to comply with the regulation issued from the European Union called Registration, Evaluation, Authorization and Restriction of Chemicals or “REACH”. Under the regulation, companies that manufacture or import more than one ton of a covered chemical substance per year are required to register it in a central database administered by the European Chemicals Agency. The registration process requires the submission of information to demonstrate the safety of chemicals as used and could result in significant costs or delay the manufacture or sale of our products in the European Union. Additionally, industry associations and their member companies, including EnerSys, have scheduled meetings with the European Union member countries to advocate for their support of an exemption for lead compounds. Compliance with these laws and regulations results in ongoing costs. Failure to comply with these laws and regulations, or to obtain or comply with required environmental permits, could result in fines, criminal charges or other sanctions by regulators. From time to time, we have had instances of alleged or actual noncompliance that have resulted in the imposition of fines, penalties and required corrective actions. Our ongoing compliance with environmental, health and safety laws, regulations and permits could require us to incur significant expenses, limit our ability to modify or expand our facilities or continue production and require us to install additional pollution control equipment and make other capital improvements. In addition, private parties, including current or former employees, can bring personal injury or other claims against us due to the presence of, or their exposure to, hazardous substances used, stored, transported or disposed of by us or contained in our products.

### *Environmental and safety certifications*

Seventeen of our facilities in the Americas, EMEA and Asia are certified to ISO 14001 standards. ISO 14001 is a globally recognized, voluntary program that focuses on the implementation, maintenance and continual improvement of an environmental management system and the improvement of environmental performance. Seven facilities in EMEA and Asia are certified to ISO 45001 standards. The ISO 45001 is a globally recognized occupational health and safety management systems standard.

### *Climate change impacts*

The potential impact of climate change on our operations is uncertain. The changing climate may result in new and erratic weather patterns, increases in the frequency or severity of storms, increased and decreased temperatures and rising sea levels. As discussed elsewhere in this Annual Report on Form 10-K, including in Item 1A. Risk Factors, our operating results are significantly influenced by weather, and major changes in historical weather patterns could have a notable impact on our future operating results. For example, if climate change results in drier weather and more accommodating temperatures over a significant period of time, we may be able to increase our productivity, which could positively impact our revenues and gross margins. Conversely, if climate change results in a greater amount of rainfall, snow, ice or other less accommodating weather

conditions, we could experience reduced productivity, which could negatively impact our revenues and gross margins. Further, while an increase in severe weather events, such as hurricanes, tropical storms, blizzards and ice storms, can create a greater amount of emergency restoration service work (an area of potential revenue generation), it often also can result in delays or other negative consequences for our manufacturing operations, or challenges to the consistent delivery of materials from our supply chain or of our products to distributors, which could negatively impact our financial results. Climate change may also affect the conditions in which we operate, and in some cases, expose us to potentially increased liabilities associated with those environmental conditions. Concerns about climate change could also result in new regulations, regulatory actions or requirements to invest in energy efficiency, any of which could result in increased costs associated with our operations. We are aware of the proposed rules on climate disclosure released by the SEC in March of last year. While we are following the progression of the rule, we are pleased to note that we are preparing to meet many of its conditions in advance. We released our inaugural, comprehensive Sustainability Report, which was aligned with GRI and SASB standards. Included in this report, we announced key, measurable environmental, social, and governance (“ESG”) goals and objectives aimed at advancing progress in sustainability, reducing our environmental footprint and creating an inclusive and empowering workplace for all employees. We also issued our inaugural Task Force of Climate Related Financial Disclosures (TCFD) Report in December 2022. As part of our growing sustainability commitment, we announced during fiscal year 2022 that we joined the United Nations Global Compact, Alliance to Save Energy, the U.S. Department of Energy’s Better Plants Program (through which we committed to reducing our energy intensity by 25% over the next 10 years (from a calendar year 2020 baseline)), the United Nations CEO Water Mandate and the CEO Action for Diversity & Inclusion. In 2022, we also submitted our CDP Climate Change disclosure to maintain transparency with our stakeholders and track our progress towards a low carbon society. We intend to continue to conduct a climate risk analysis in the coming year and have completed an analysis of our Scope 1 and 2 emissions. Additionally, we have taken the initial steps to quantify our Scope 3 emissions as we understand that identifying the impacts associated with our production, distribution, and use of our products is critical for further climate risk mitigation.

We strive to operate our facilities in a manner that protects the environment and the health and safety of our employees, customers and communities. We have established required sustainability training for identified employees and incorporate climate and other sustainability considerations into our formal decision-making processes. We have implemented company-wide environmental, health and safety policies and practices, which includes monitoring, training and communication of these policies.

## Quality Systems

We utilize a global strategy for quality management systems, policies and procedures, the basis of which is the ISO 9001:2015 standard, a worldwide recognized quality standard. We believe in the principles of this standard and reinforce the same by requiring mandatory compliance for all manufacturing, sales and service locations globally that are registered to the ISO 9001 standard. We also focus on specific plant certifications such as AS9100 (Aerospace), ISO13485:2016 (Medical Devices), ISO/TS 22163:2017 (Rail), IATF16949:2018 (Automotive). We have also acquired our first Lithium-Ion product certification in accordance with ISO 26262 (Product Safety).

This strategy enables us to provide consistent quality products and services to meet our customers’ needs.

## Human Capital Management

EnerSys is committed to a comprehensive, cohesive and positive employee experience. We consider talent acquisition, development, engagement and retention critical key drivers of our business success.

Our Board of Directors, through the Compensation Committee and the Nominating and Corporate Governance Committee, retains oversight of our human capital management process, including demographics, talent development, employee retention, material aspects of employee compensation, as well as diversity and inclusion and recruitment efforts. The Nominating and Corporate Governance Committee reports on human capital matters at each regularly scheduled Board of Directors meeting. The most significant human capital measures, objectives and initiatives include the following:

**Health, Safety, and Wellness:** Our fundamental responsibility as an employer is to provide a safe and healthy workplace for all our employees. This undertaking is explained further in our Safety and Health Policy. Our health and safety programs are designed around global standards with appropriate variations addressing the multiple jurisdictions and regulations, specific hazards and unique working environments of our manufacturing and production facilities, service centers and headquarter operations. Above all else, we are dedicated to the safety and well-being of our employees.

**Diversity, Equity, Inclusion and Belonging:** We strive to create a work environment that emphasizes respect, fairness and dignity and that does not tolerate discrimination or harassment. Individuals are evaluated based on merit, without concern for

race, color, religion, national origin, citizenship, marital status, gender (including pregnancy), gender identity, gender expression, sexual orientation, age, disability, veteran status, or other characteristics protected by law. We are committed to providing equal opportunities to every member of our workforce. In addition to following all applicable local laws and regulations, for fiscal year 2022, we have also formed an executive steering committee, joined, among other things, the CEO Action for Diversity and Inclusion, and funded additional staffing to further support these efforts.

**Philanthropy and Volunteerism:** Over the past fiscal year we created an executive level committee dedicated to encouraging and supporting charitable efforts by EnerSys globally. EnerSys is strongly committed to being an outstanding corporate citizen on a global basis in all the countries and communities where we do business. This commitment is reflected in a strong ethic for charitable contributions, endorsement of community activities, encouraging employees to give freely of their own time to serve on boards or committees in many organizations and supporting educational programs in schools and colleges.

We created several committees to assist the company in its philanthropic endeavors that support the communities in which we work. Additionally, we regularly sponsor volunteer events and fundraising campaigns, to encourage our employees to give back to our communities, a commitment that we further support by offering employees paid time off for charitable volunteering.

**Training and Career Management:** Employees receive regular development feedback through quarterly 1:1 reviews with their manager, which encourages open dialogues to identify and cultivate skills and opportunities. We encourage our leaders to facilitate effective conversations and measure the effectiveness of these conversations by regularly surveying our employees. In addition to training and development opportunities, all new employees are required to participate in seminars to introduce them to the EnerSys business, our strategy, our culture and philosophies. We encourage all our employees to engage in ongoing training, professional development and educational advancement programs. Through our established EnerSys Academy, we provide employees worldwide with resources to expand their knowledge on a broad scope of relevant topics to promote their growth and development.

**Compensation and Benefits:** To attract, retain and recognize talent, we aim to ensure merit-based, compensation practices and strive to provide competitive compensation and benefit packages to our workforce. We provide employee wages that are consistent with employee positions, skill levels, experience, knowledge and geographic location. We align our executives' and eligible employees' annual bonus opportunity and long-term equity compensation with our stockholders' interests by linking realizable pay with company financial performance. In addition, we perform annual pay equity studies to evaluate our global pay practices across the organization.

## Environmental, Social and Governance

At EnerSys, we understand that an effective business strategy must also be one that evaluates and addresses environmental and social risk factors as well as opportunities to leverage sustainable operations and ethical behavior as a means of driving business value. To that end, we have been integrating the fundamental values of ESG into our everyday operations and future business strategies. Our Sustainability Team leads ESG our efforts with respect to climate change management, product sustainability, operations, supply chain management.

Sustainability, reliability and resilience are at the core of who we are and what we do at EnerSys every day. Our products help tackle some of our world's most significant challenges, be it addressing the impacts of climate change, decarbonization, efficient and affordable distribution of goods, grid reliability, telecommunications, and even medical safety. Our batteries and energy storage solutions are part of building a resilient, low-carbon future.

Sustainability at EnerSys is, however, about more than just the benefits and impacts of our products. Our commitment encompasses essential ESG issues fundamental to how we manage our own operations. Minimizing our environmental footprint and providing a safe and inclusive workplace for our employees are top priorities for EnerSys. Being an excellent neighbor and good corporate citizen in the communities where we work and live is extremely important as well. Our products facilitate positive environmental, social and economic impacts around the world. We believe that the power systems and energy management sector have a key role to play in finding innovative solutions to address global climate change. Our climate change policy underscores our goal to carry out all business activities in a sustainable manner. Our environmental policies and practices aim to protect, conserve, and sustain the world's natural resources, as well as to protect our customers and the communities in which we live and operate. As one example of this, we offer a complete battery recycling program to assist our customers in preserving our environment and comply with recycling and waste disposal regulations.

Relationships between EnerSys and our suppliers must be based on mutual respect and integrity. Our purchasing and quality teams strive to maintain the highest standards and principles of business ethics, courtesy and competence in dealings and transactions with suppliers. Our code of supplier conduct reflects our commitment to the values of honesty, integrity, respect, and responsibility. We expect our suppliers will share and embrace our values, as well as our commitment to regulatory compliance.

We have an ESG steering committee, which includes members of senior management and funded additional staffing to further support the ongoing development of our ESG program. Our Board of Directors oversees our programs related to matters of corporate responsibility and sustainability performance, including climate change, through the Nominating and Corporate Governance Committee. We publish an annual Sustainability Report, including ESG data, as well as a Task Force on Climate Related Financial Disclosures report and submission to the CDP. We are members of United Nations Global Compact, Alliance to Save Energy, the U.S. Department of Energy's Better Plants Program (through which we committed to reducing our energy intensity by 25% over the next 10 years (from a calendar year 2020 baseline)), and the United Nations CEO Water Mandate. These actions demonstrate the strength and commitment to sustainability throughout the organization worldwide.

#### **Available Information**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. These filings are available to the public on the Internet at the SEC's website at <http://www.sec.gov>.

Our Internet address is <http://www.enersys.com>. We make available free of charge on <http://www.enersys.com> our annual, quarterly and current reports, and amendments to those reports, as soon as reasonably practical after we electronically file such material with, or furnish it to, the SEC.

**ITEM 1A. RISK FACTORS**

The following are certain risk factors that could materially and adversely affect our business, financial condition and our results of operations and could cause actual results to differ materially from our expectations and projections. Stockholders are cautioned that these and other factors, including those beyond our control, may affect future performance and cause actual results to differ from those which may, from time to time, be anticipated. The risks that are described below are not the only ones that we face. These risk factors should be considered in connection with the matters discussed herein under "Cautionary Note Regarding Forward-Looking Statements" and other information included and incorporated by reference in this Form 10-K as well as in other reports and materials that we file with the SEC. All forward-looking statements made by us or on our behalf are qualified by the risks described below. Although the risks are organized by headings and by category, many risks are interrelated. You should not interpret the disclosure of any risk factor to imply that the risk has not already materialized.

**Business and Operating Risks**

*We operate in an extremely competitive industry and are subject to pricing pressures.*

We compete with a number of major international manufacturers and distributors, as well as a large number of smaller, regional competitors. Due to excess capacity in some sectors of our industry and consolidation among industrial battery purchasers, we have been subjected to significant pricing pressures. We anticipate continued competitive pricing pressure as foreign producers are able to employ labor at significantly lower costs than producers in the U.S. and Western Europe, expand their export capacity and increase their marketing presence in our major Americas and European markets. Several of our competitors have strong technical, marketing, sales, manufacturing, distribution and other resources, as well as significant name recognition, established positions in the market and long-standing relationships with OEMs and other customers. In addition, certain of our competitors own lead smelting facilities which, during periods of lead cost increases or price volatility, may provide a competitive pricing advantage and reduce their exposure to volatile raw material costs. Our ability to maintain and improve our operating margins depends on our ability to control and reduce our costs in addition to our ability to maintain business relationships with customers. If we are unable to offset pricing pressures, our profitability and cash flows could be adversely affected. We cannot assure you that we will be able to continue to control our operating expenses, to raise or maintain our prices or increase our unit volume, in order to maintain or improve our operating results.

*Reliance on third party relationships and derivative agreements could adversely affect our business.*

We depend on third parties, including suppliers, distributors, lead toll operators, freight forwarders, insurance brokers, commodity brokers, major financial institutions and other third party service providers, for key aspects of our business, including the provision of derivative contracts to manage risks of commodity cost volatility, foreign currency exposures and interest rate volatility. Failure of these third parties to meet their contractual, regulatory and other obligations to us, or the development of factors that materially disrupt our relationships with these third parties, could expose us to the risks of business disruption, higher commodity and interest costs, unfavorable foreign currency rates and higher expenses, which could have a material adverse effect on our business.

*Changes in the cost and availability of raw materials could adversely affect our business, financial position and results of operations.*

Lead is our most significant raw material and is used along with significant amounts of plastics, steel, copper and other materials in our manufacturing processes. We estimate that raw material costs account for over half of our cost of goods sold. The costs of these raw materials, particularly lead, are volatile and beyond our control. Additionally, availability of the raw materials used to manufacture our products may be limited at times, resulting in higher prices or the need to find alternative suppliers. Furthermore, the cost of raw materials may also be influenced by transportation costs. Volatile raw material costs can significantly affect our operating results and make period-to-period comparisons difficult. To reduce the volatility of our costs, we periodically enter into hedging arrangements for a portion of our projected requirements. However, we cannot assure you that we will be able to either hedge the costs or secure the availability of our raw material requirements at a reasonable level or, even with respect to our agreements that adjust pricing to a market-based index for lead, pass on to our customers the increased costs of our raw materials without affecting demand or that limited availability of materials will not impact our production capabilities. Our inability to raise the price of our products in response to increases in prices of raw materials due to pricing pressure, contract terms or other factors or to maintain a proper supply of raw materials could have an adverse effect on our business, financial position and results of operations.

*Cost increases, supply disruptions or shortages of any of our battery components, such as electronic and mechanical parts, or the raw materials used in the production of such parts could adversely affect our business.*

From time to time, we may experience increases in the cost or a sustained interruption in the supply or shortage of our components. For example, a global shortage and component supply disruptions of electronic and other battery components is currently being reported, and the full impact to us is not yet known. Other shortages and component supply disruptions could affect the supply of electronic components and raw materials (such as resins and other raw metal materials) that go into the production of our products. Cost increases or supply interruptions could materially and negatively impact our business, prospects, financial condition and operating results. The prices for our components fluctuate depending on market conditions and global demand and could adversely affect our business, prospects, financial condition and operating results. For instance, we are exposed to multiple risks relating to price fluctuations for battery cells. These risks include, but are not limited to:

- supply shortages caused by the inability or unwillingness of our suppliers and their competitors to build or operate component production facilities to supply the numbers of battery components required to support the rapid growth of the electric vehicle industry and other industries in which we operate as demand for such components increases;
- disruption in the supply of electronic circuits due to quality issues or insufficient raw materials;
- a decrease in the number of manufacturers of battery components; and
- an increase in the cost of raw materials.

We are dependent on the continued supply of battery components for our products. To date, we have a limited number of fully qualified suppliers, and have limited flexibility in changing suppliers, though we are actively engaged in activities to qualify additional suppliers. Any disruption in the supply of battery components could temporarily disrupt production of our products until a different supplier is fully qualified.

The cost of our battery products depends in part upon the prices and availability of raw materials such as lead, lithium, nickel, cobalt or other metals. The prices for these materials fluctuate and their available supply may be unstable, depending on market conditions and global demand for these materials, including as a result of increased global production of electric vehicles and energy storage products. Furthermore, fluctuations or shortages in petroleum and other economic conditions may cause us to experience significant increases in freight charges. Any reduced availability of these raw materials or substantial increases in their prices may increase the cost of our components and consequently, the cost of our products. There can be no assurance that we will be able to recoup increasing costs of our components by increasing prices, which in turn could damage our brand, business, prospects, financial condition and operating results.

*We have experienced and may continue to experience, difficulties implementing our global enterprise resource planning system, which may adversely affect our business, financial condition and results of operations.*

We are engaged in a multi-year implementation of a global enterprise resource planning system (“ERP”). The ERP is designed to standardize business processes to efficiently maintain our financial records and provide critical operational information to our management team. The ERP will continue to require significant investment of human and financial resources. In our prior efforts implementing the ERP, we experienced significant production and shipping delays, increased costs and other difficulties. Any significant disruption or deficiency in the design and implementation of the ERP could adversely affect our ability to process orders, ship products, send invoices and track payments, fulfill contractual obligations or otherwise operate our business. Even with our investment of significant resources into the ERP system, additional and significant implementation issues may arise. In addition, our efforts to centralize various business processes and functions within our organization in connection with our ERP implementation may disrupt our operations, divert management’s attention and negatively impact our business, financial condition and results of operations.

*The failure to successfully implement efficiency and cost reduction initiatives, including restructuring activities, could materially adversely affect our business, financial position and results of operations, and we may not realize some or all of the anticipated benefits of those initiatives.*

From time to time, we have implemented efficiency and cost reduction initiatives intended to improve our profitability and to respond to changes impacting our business and industry. These initiatives include relocating manufacturing to lower cost regions, consolidating and closing facilities, working with our material suppliers to lower costs, product design and manufacturing improvements, personnel reductions and voluntary retirement programs, and strategically planning capital expenditures and development activities. In the past we have recorded net restructuring charges to cover costs associated with our cost reduction initiatives involving restructuring. These costs have been primarily composed of employee separation costs, including severance payments, and asset impairments or losses from disposal. We also undertake restructuring activities and

programs to improve our cost structure in connection with our business acquisitions, which can result in significant charges, including charges for severance payments to terminated employees and asset impairment charges.

We cannot assure you that our efficiency and cost reduction initiatives will be successfully or timely implemented, or that they will materially and positively impact our profitability. Because our initiatives involve changes to many aspects of our business, the associated cost reductions could adversely impact productivity and sales to an extent we have not anticipated. In addition, our ability to complete our efficiency and cost-savings initiatives and achieve the anticipated benefits within the expected time frame is subject to estimates and assumptions and may vary materially from our expectations, including as a result of factors that are beyond our control. Furthermore, our efforts to improve the efficiencies of our business operations and improve growth may not be successful. Even if we fully execute and implement these activities and they generate the anticipated cost savings, there may be other unforeseeable and unintended consequences that could materially adversely impact our profitability and business, including unintended employee attrition or harm to our competitive position. To the extent that we do not achieve the profitability enhancement or other benefits of our efficiency and cost reduction initiatives that we anticipate, our business, financial position and results of operations may be materially adversely affected.

*Our failure to introduce new products and product enhancements coupled with broad market acceptance of new technologies introduced by our competitors could adversely affect our business.*

Many new energy storage technologies have been introduced over the past several years. For certain important and growing markets, including markets served by our Motive Power and Energy Storage business segments, lithium-based battery technologies have a growing market share. Our ability to achieve significant and sustained penetration of key developing markets, including markets served by our Motive Power and Energy Storage business segments, will depend upon our success in developing or acquiring these and other technologies and related raw materials and components, either independently, through joint ventures or through acquisitions. If we fail to develop or acquire, and manufacture and sell, products that satisfy our customers' demands, or we fail to respond effectively to new product announcements by our competitors by quickly introducing competitive products, then market acceptance of our products could be reduced and our business could be adversely affected. We cannot assure you that our portfolio of primarily lead-acid products will remain competitive with products based on new technologies.

*If we are not able to adequately protect our proprietary intellectual property and technology, we may lose any technological advantages and our business, financial position and results of operations may be materially adversely affected.*

We rely on a combination of copyright, trademark, patent and trade secret laws, non-disclosure agreements and other confidentiality procedures and contractual provisions to establish, protect and maintain our proprietary intellectual property and technology and other confidential information. Certain of these technologies, especially thin plate pure lead ("TPPL") technology, are important to our business and are not protected by patents. Despite our efforts to protect our proprietary intellectual property and technology and other confidential information, unauthorized parties may attempt to copy or otherwise obtain and use our intellectual property and proprietary technologies. Successful cybersecurity attacks, data breaches, unauthorized exfiltration, unapproved use of machine learning or artificial intelligence tools, or other security incidents could result in the loss of intellectual property and key technological advantages. If we are unable to protect our intellectual property and technology, we may lose any technological advantage we currently enjoy and may be required to take an impairment charge with respect to the carrying value of such intellectual property or goodwill established in connection with the acquisition thereof. In either case, our business, financial position and results of operations may be materially adversely affected.

*Relocation of our customers' operations could adversely affect our business, financial condition and results of operations.*

The trend by a number of our North American and Western European customers to move manufacturing operations and expand their businesses in faster growing and lower labor-cost markets may have an adverse impact on our business, financial condition and results of operations. These territories may be farther from our manufacturing plants, and there is a risk that these customers will source their energy storage products from competitors located in those territories and will cease or reduce the purchase of products from us. We cannot assure you that we will be able to compete effectively with our competitors located in those territories, whether by establishing or expanding our manufacturing operations in those territories or acquiring existing manufacturers in those territories.

*Quality problems with our products could harm our reputation and erode our competitive position.*

The success of our business depends upon the quality of our products and our relationships with customers. In the event that our products fail to meet our customers' standards, our reputation could be harmed. This could result in the loss of customers, a decrease in revenue and a loss of market share. We cannot assure you that our customers will not experience quality problems with our products. Warranty, recall or product liability claims could also materially adversely affect our business and

reputation. In our business, we are exposed to warranty and product liability claims. In addition, we may be required to participate in the recall of a product. If we fail to meet customer specifications for their products, we may be subject to product quality costs and claims, as well as adverse reputational impacts. A successful warranty or product liability claim against us, or a requirement that we participate in a product recall, could have a material adverse effect on our business, financial condition and results of operations.

*We offer our products under a variety of brand names, the protection of which is important to our reputation for quality in the consumer marketplace.*

We rely upon a combination of trademark, licensing and contractual covenants to establish and protect the brand names of our products. We have registered many of our trademarks in the U.S. Patent and Trademark Office and in other countries. In many market segments, our reputation is closely related to our brand names. Monitoring unauthorized use of our brand names is difficult, and we cannot assure you that the steps we have taken will prevent the unauthorized use of our brand names, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the U.S. We cannot assure you that our brand names will not be misappropriated or utilized without our consent. In the event of any such actions, our reputation and our business, financial condition and results of operations may be materially adversely affected.

*Our growth strategy depends on our ability to continue to expand our market presence through acquisitions, and our business could be materially adversely affected if we are unable to identify suitable acquisition candidates, complete any proposed acquisitions or successfully integrate the businesses we acquire.*

As part of our growth strategy, we depend on acquisitions of other product lines, technologies or facilities that complement or expand our existing business. Acquisitions involve numerous risks, including:

- inability to overcome significant competition for acquisition targets in the stored energy industry;
- inability to identify suitable acquisition candidates or negotiate attractive terms;
- difficulty obtaining the financing necessary to complete transactions we pursue, as our credit facilities restrict the amount of additional indebtedness that we may incur to finance acquisitions and place other restrictions on our ability to make acquisitions (and exceeding any of these restrictions would require the consent of our lenders);
- failure to identify all material issues through a customary due diligence investigation, and that material issues will arise later;
- difficulties in the assimilation of the operations, systems, controls, technologies, personnel, services and products of the acquired business;
- potential loss of key employees, customers, suppliers and distributors of the acquired business;
- diversion of our management's attention from other business concerns;
- incurrence of additional debt or adverse tax and accounting consequences in connection with any acquisitions;
- failure to successfully integrate the acquired businesses in a timely manner, or at all;
- incurrence of significant unanticipated expenses associated with integration activities; and
- anticipated benefits of an acquisition not being realized fully or at all, or taking longer to realize than we expect.

The materialization of any of the foregoing risks could impair our ability to successfully execute our acquisition growth strategy, which could have a material adverse effect on our business.

*Any acquisitions that involve the issuance of our equity securities may dilute our stockholder ownership interests, reduce the market price of our stock, or both, and as a result our business, financial condition and results of operations could be adversely affected.*

Future acquisitions may involve the issuance of our equity securities as payment, in part or in full, for the businesses or assets acquired. Any future issuances of equity securities may dilute our stockholders' proportionate ownership interests in EnerSys. In addition, the benefits derived by us from an acquisition might not outweigh or exceed the dilutive effect of any issuance of equity securities in connection with the acquisition. We cannot predict or estimate the amount or timing of any future acquisitions or related issuances of equity securities. Our stockholders bear the risk of any such future offerings reducing the market price of our stock and diluting their proportionate ownership interests in EnerSys.

*If our electronic data is compromised, our business could be materially adversely affected.*

We and our business partners maintain significant amounts of data electronically in locations around the world. This data relates to all aspects of our business, including current products and services and future products and services under development. This data also contains certain customer, supplier, partner and employee information. We maintain systems and processes designed to protect this data. However, notwithstanding such protective measures, there is a risk of intrusion, cyberattacks, tampering, theft, misplaced or lost data, programming or human errors that could compromise the integrity and privacy of this data, improper use of our systems, software solutions or networks, power outages, hardware failures, computer viruses, failure of critical computer systems, unauthorized access, use, disclosure, modification or destruction of information, defective products, production downtimes and operational disruptions, which in turn could adversely affect our business, financial condition and results of operations.

We provide confidential and proprietary information to our third-party business partners in certain cases where doing so is necessary to conduct our business. While we obtain assurances from those parties that they have systems and processes in place to protect such data and, where applicable, that they will take steps to assure the protections of such data by third parties, those partners may be subject to the same risks as we are.

In particular, we and our third-party business partners experience cybersecurity incidents of varying degrees from time-to-time, including ransomware and phishing attacks as well as distributed denial of service attacks and the theft of data. Cyber threats are constantly evolving, are becoming more sophisticated and are being made by groups and individuals with a wide range of expertise and motives, and this increases the difficulty of detecting and successfully defending against them.

Any compromise of the confidential data of our customers, suppliers, partners, employees or ourselves, or failure to prevent or mitigate the loss of or damage to this data through breach of our information technology systems or other means could substantially disrupt our operations, harm our customers, employees and other business partners, damage our reputation, violate applicable laws and regulations, subject us to potentially significant costs and liabilities and result in a loss of business that could be material.

*Our software and related services are highly technical and may contain undetected software bugs, errors or other vulnerabilities, which could manifest in ways that could adversely affect our reputation and our business.*

The software and related services that we offer are highly technical and complex. Our services or any other products that we may introduce in the future may contain undetected software bugs, hardware errors and other vulnerabilities. These vulnerabilities can manifest in any number of ways in our products, including through diminished performance, security vulnerabilities, malfunctions, or even permanently disabled products. We have a practice of regularly updating our products, and some errors in our products may be discovered only after a product has been used. In some cases, any vulnerabilities may only be detected under certain circumstances or after extended use. Any errors, bugs or other vulnerabilities discovered in our code or backend after release could damage our reputation, alienate users, allow third parties to manipulate or exploit our software, lower revenue and expose us to claims for damages, any of which could adversely affect our business. Additionally, errors, bugs or other vulnerabilities may, either directly or if exploited by third parties, affect our ability to make accurate royalty payments. We also could face claims for product liability, tort or breach of warranty as a result. Defending a lawsuit, regardless of its merit, is costly and may divert management's attention and adversely affect our reputation and our business. In addition, if our liability insurance coverage proves inadequate or future coverage is unavailable on acceptable terms or at all, our business could be seriously harmed.

*If we cannot keep pace with rapid developments in technology, the use of our products and services and, consequently, our revenues could decline.*

Our business continues to demand the use of sophisticated systems and technology. These systems and technologies must be refined, updated and replaced with more advanced systems on a regular basis in order for us to meet our customers' demands and expectations. We expect that new technologies applicable to our business will continue to emerge and may be superior to, or render obsolete, the technologies we currently use in our products and services. We cannot predict the effects of technological changes on our business, which technological developments or innovations will become widely adopted, and how those technologies may be regulated. Developing and incorporating new or updated systems and technologies into new and existing products and services may require significant investment, take considerable time and may not ultimately be successful. If we are unable to do so on a timely basis or within reasonable cost parameters, or if we are unable to appropriately and timely train our employees to operate any of these new systems or technologies, our business could be adversely affected. We also may not achieve the benefits that we anticipate from any new system or technology and a failure to do so could result in higher than anticipated costs and adversely affect our results of operations.

*Work stoppages or similar difficulties could significantly disrupt our operations, reduce our revenues and materially adversely affect our business.*

A work stoppage at one or more of our facilities, whether caused by fire, flooding, epidemics, pandemics (including the COVID-19 outbreak), military hostilities, government-imposed shutdowns, severe weather, including that caused by climate change, other natural disaster or otherwise, could have a material adverse effect on our business, financial condition and results of operations. In addition, some of our employees are represented by labor unions or works councils under collective bargaining agreements with varying durations and terms. Although we believe that our relations with our employees are strong, if our unionized workers were to engage in a strike, work stoppage or other slowdown in the future, we could experience a significant disruption of our operations. No assurances can be made that we will not experience work stoppages due to government directives, employee health concerns, and other types of conflicts with labor unions, works councils, and other similar groups in the future.

A work stoppage at one or more of our suppliers could also materially and adversely affect our business if an alternative source of supply is not readily available. In addition, if one or more of our customers were to experience a work stoppage, that customer could cease or limit purchases of our products, which could have a material adverse effect on our business, financial condition and results of operations. In addition, the credit and default risk or bankruptcy of customers or suppliers as a result of work stoppages could likewise materially and adversely affect our business, financial condition and results of operations.

### **Global Operations Risks**

*Our results of operations may be negatively impacted by public health epidemics or outbreaks, including the novel coronavirus (“COVID-19”).*

Public health epidemics or outbreaks could adversely impact our global operations. The COVID-19 pandemic caused disruption to the global economy, including economic slowdowns and supply chain disruptions that adversely affected our business, financial position and results of operations. In response to public health epidemics or outbreaks, countries imposed prolonged quarantines and travel restrictions, which may significantly impact the ability of our employees to get to their places of work to produce products, may make it such that we are unable to obtain sufficient components or raw materials and component parts on a timely basis or at a cost-effective price or may significantly hamper our products from moving through the supply chain.

We rely on our production facilities, as well as third-party suppliers and manufacturers, in the United States, Australia, Canada, France, Germany, Italy, the People's Republic of China ("PRC"), the United Kingdom and other countries that were significantly impacted by COVID-19. Shutdowns of certain businesses in many of these countries resulted in disruptions or delays to our supply chain or reduction in demand for certain products. Although disruptions may continue to occur and the future impact of the outbreak is uncertain, the impacts of the public health epidemics or outbreaks (or events similar to COVID-19 in the future) cannot be reliably quantified at this time.

The rapid spread of a contagious illness such as COVID-19, poses the risk that our employees, contractors, suppliers and customers may be prevented from conducting business, which may have a material adverse effect on our business, financial position and results of operations.

*The uncertainty in global economic conditions or geographic regions in which our customers operate could adversely affect our business, financial position and operating results.*

Our operating results are directly affected by the general global economic conditions of the industries in which our major customer groups operate. Our products are heavily dependent on the end markets that we serve and our operating results will vary by location, depending on the economic environment in these markets. Sales of our motive power products, for example, depend significantly on demand for new electric industrial forklift trucks, which in turn depends on end-user demand for additional motive capacity in their distribution and manufacturing facilities. The uncertainty in global economic conditions varies by geographic location and can result in substantial volatility in global credit markets, particularly in the United States, where we service the vast majority of our debt. Moreover, Federal Reserve Bank of the United States policy, including with respect to rising interest rates and the decision to end its quantitative easing policy, may also result in market volatility or a return to unfavorable economic conditions. These conditions affect our business by reducing prices that our customers may be able or willing to pay for our products or by reducing the demand for our products, which could in turn negatively impact our sales and earnings generation and result in a material adverse effect on our business, cash flow, results of operations and financial position.

*Government reviews, inquiries, investigations and actions could harm our business or reputation.*

As we operate in various locations around the world, our operations in certain countries are subject to significant governmental scrutiny and may be adversely impacted by the results of such scrutiny. The regulatory environment with regard to our business is evolving, and officials often exercise broad discretion in deciding how to interpret and apply applicable regulations. From time to time, we receive formal and informal inquiries from various government regulatory authorities, as well as self-regulatory organizations, about our business and compliance with local laws, regulations or standards.

Any determination that our operations or activities, or the activities of our employees, are not in compliance with existing laws, regulations or standards could result in the imposition of substantial fines, interruptions of business, loss of supplier, vendor, customer or other third-party relationships, termination of necessary licenses and permits, or similar results, all of which could potentially harm our business and reputation. Even if an inquiry does not result in these types of determinations, regulatory authorities could cause us to incur substantial costs or require us to change our business practices in a manner materially adverse to our business, and it potentially could create negative publicity which could harm our business and reputation.

*Our international operations may be adversely affected by actions taken by foreign governments or other forces or events over which we may have no control.*

We currently have significant manufacturing and distribution facilities outside of the United States, in Argentina, Australia, Belgium, Brazil, Canada, the Czech Republic, France, Germany, India, Italy, Malaysia, Mexico, the PRC, Poland, Spain, Switzerland and the United Kingdom. Our global operations are dependent upon products manufactured, purchased and sold in the U.S. and internationally, including in countries with political and economic instability or uncertainty. This includes, for example, the uncertainty related to the United Kingdom's withdrawal from the European Union (commonly known as "Brexit") the current conflict between Russia and Ukraine, ongoing terrorist activity, the adoption and expansion of trade restrictions, including the occurrence or escalation of a "trade war," or other governmental action related to tariffs or trade agreements or policies among the governments of the United States, the PRC and other countries and other global events. The global credit and financial markets have recently experienced extreme volatility and disruptions, including severely diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, increases in unemployment rates and uncertainty about economic stability. Sanctions imposed by the United States and other countries in response to such conflicts, including the one in Ukraine, may also adversely impact the financial markets and the global economy, and any economic countermeasures by affected countries and others could exacerbate market and economic instability. There can be no assurance that further deterioration in credit and financial markets and confidence in economic conditions will not occur. Recent effects of the conflict between Russia and Ukraine includes writing off \$4 million in net assets located in Russia during fiscal 2022. Furthermore, Brexit could cause disruptions to, and create uncertainty surrounding our business, including affecting our relationships with our existing and future customers, suppliers and associates, which could have an adverse effect on our business, financial results and operations. Effects of Brexit include changes in customs regulations, shortages of truck drivers in the U.K., and administrative burdens placed on transportation companies have led to challenges and delays in moving inventory across U.K. or EU borders, and higher importation, freight and distribution costs. If such trends continue, we may experience further cost increases.

Some countries have greater political and economic volatility and greater vulnerability to infrastructure and labor disruptions than others. Our business could be negatively impacted by adverse fluctuations in freight costs, limitations on shipping and receiving capacity, and other disruptions in the transportation and shipping infrastructure at important geographic points of exit and entry for our products. Operating in different regions and countries exposes us to a number of risks, including:

- multiple and potentially conflicting laws, regulations and policies that are subject to change;
- changes in international treaties or trade unions, which may make our products or our customers' products more costly to export or import;
- imposition of currency restrictions, restrictions on repatriation of earnings or other restraints imposition of burdensome import duties, tariffs or quotas, which may make our products more costly to export or import;
- changes in trade agreements;
- disadvantages of competing against companies from countries that are not subject to U.S. laws and regulations, including the FCPA;
- compliance with data protection regulations;
- imposition of new or additional trade and economic sanctions laws imposed by the U.S. or foreign governments;
- war or terrorist acts; and
- political and economic instability or civil unrest that may severely disrupt economic activity in affected countries.

The occurrence of one or more of these events may adversely affect our business, financial condition and results of operations.

*We are exposed to exchange rate and inflation risks, and our net earnings and financial condition may suffer due to currency translations.*

We invoice our foreign sales and service transactions in local and foreign currencies and translate net sales using actual exchange rates during the period. We translate our non-U.S. assets and liabilities into U.S. dollars using current exchange rates as of the balance sheet dates. Approximately 40% of net sales were generated outside of the United States in fiscal 2023. Because a significant portion of our revenues and expenses are denominated in foreign currencies, changes in exchange rates between the U.S. dollar and foreign currencies, including the effects of inflation, primarily the euro, British pound, Polish zloty, Chinese renminbi, Mexican peso and Swiss franc, may adversely affect our revenue, cost of goods sold and operating margins. For example, foreign currency depreciation against the U.S. dollar will reduce the value of our foreign revenues and operating earnings as well as reduce our net investment in foreign subsidiaries. In addition, we have balance sheet foreign currency positions that benefit from a stronger U.S. dollar and weak euro and may impact other income expense and equity on the balance sheet.

Most of the risk of fluctuating foreign currencies is in our European operations, which comprised approximately one-fifth of our net sales during the last three fiscal years. The euro is the dominant currency in our EMEA operations. In the event that one or more European countries were to replace the euro with another currency, our sales into such countries, or into Europe generally, would likely be adversely affected until stable exchange rates are established.

If foreign currencies depreciate against the U.S. dollar, it would make it more expensive for our non-U.S. subsidiaries to purchase certain of our raw material commodities that are priced globally in U.S. dollars, while the related revenue will decrease when translated to U.S. dollars. Significant movements in foreign exchange rates can have a material impact on our results of operations and financial condition. We periodically engage in hedging of our foreign currency exposures, but cannot assure you that we can successfully hedge all of our foreign currency exposures or do so at a reasonable cost.

We quantify and monitor our global foreign currency exposures. Our largest foreign currency exposure is from the purchase and conversion of U.S. dollar-based lead costs into local currencies in Europe. Additionally, we have currency exposures from intercompany financing and intercompany and third party trade transactions. On a selective basis, we enter into foreign currency forward contracts and purchase option contracts to reduce the impact from the volatility of currency movements; however, we cannot be certain that foreign currency fluctuations will not impact our operations in the future.

If we are unable to effectively hedge against currency fluctuations, our operating costs and revenues in our non-U.S. operations may be adversely affected. This, in turn, would have an adverse effect on our business, financial position and results of operations.

### **Financial and Accounting Risks**

*We may not be able to maintain adequate credit facilities, which could materially adversely affect our business, financial condition and results of operations.*

Our ability to continue our ongoing business operations and fund future growth depends on our ability to maintain adequate credit facilities and to comply with the financial and other covenants in such credit facilities or to secure alternative sources of financing. However, such credit facilities or alternate financing may not be available or, if available, may not be on terms favorable to us. If we do not have adequate access to credit, we may be unable to refinance our existing borrowings and credit facilities when they mature and fund future acquisitions, which may reduce our flexibility in responding to changing industry conditions and materially adversely affect our business, financial condition and results of operations.

*Our indebtedness could adversely affect our business, financial condition and results of operations and restrict us in ways that limit our flexibility in operating our business.*

As of March 31, 2023, we had \$1,073 million of total consolidated debt (including finance leases). This level of debt could:

- increase our vulnerability to adverse general economic and industry conditions, including interest rate fluctuations, because a portion of our borrowings bear, and will continue to bear, interest at floating rates;
- require us to dedicate a substantial portion of our cash flow from operations to debt service payments, which would reduce the availability of our cash to fund working capital, capital expenditures or other general corporate purposes, including acquisitions;
- limit our flexibility in planning for, or reacting to, changes in our business and industry;
- restrict our ability to introduce new products or technologies or exploit business opportunities;
- place us at a disadvantage compared with competitors that have proportionately less debt;
- limit our ability to borrow additional funds in the future, if we need them, due to financial and restrictive covenants in our debt agreements;
- limit our operating and financial flexibility due to financial and restrictive covenants in our debt agreements; and
- have a material adverse effect on us if we fail to comply with the financial and restrictive covenants in our debt agreements.

In addition, our ability to make scheduled payments on or to refinance our debt obligations depends on our financial condition and operating performance, which is subject to prevailing economic and competitive conditions and to financial, business, legislative, regulatory and other factors, some of which are beyond our control. Any failure to make scheduled payments could adversely affect our business, financial condition and results of operations.

*We may have exposure to greater than anticipated tax liabilities, which could adversely impact our business, financial position and results of operations.*

Our income tax obligations are based in part on our corporate operating structure and intercompany arrangements, including the manner in which we operate our business, develop, value, manage, protect, and use our intellectual property and the valuations of our intercompany transactions. We may also be subject to additional indirect or non-income based taxes. The tax laws applicable to our business, including the laws of the United States and other jurisdictions, are subject to interpretation, and certain jurisdictions are aggressively interpreting their laws in new ways in an effort to raise additional tax revenue from multi-national companies like us. The taxing authorities of the jurisdictions in which we operate may challenge our tax positions and methodologies for valuing developed technology or intercompany arrangements, which could increase our worldwide effective tax rate and adversely impact our business, financial position and results of operations. Although we believe that our provision for income taxes is reasonable, the ultimate tax outcome may differ from the amounts recorded in our financial statements and may materially affect our financial results in the period or periods for which such determination is made. In addition, our future income tax rates could be adversely affected by earnings being lower than anticipated in jurisdictions that have lower statutory tax rates and higher than anticipated in jurisdictions that have higher statutory tax rates, by changes in the valuation of our deferred tax assets and liabilities, or by changes in tax laws, regulations, or accounting principles.

*Changes in tax laws or tax rulings could materially affect our business, financial position and results of operations.*

The income and non-income tax regimes to which we are subject or under which we operate are unsettled and may be subject to significant change. Changes in tax laws or tax rulings, or changes in interpretations of existing laws, could materially affect our business, financial position and results of operations. In addition, many countries in Europe, as well as a number of other countries and organizations, have recently proposed or recommended changes to existing tax laws or have enacted new laws that could significantly increase our tax obligations in many countries where we do business or require us to change the manner in which we operate our business. For example:

- On August 16, 2022, the U.S. Congress passed the Inflation Reduction Act of 2022 (the “IRA”), which, among other provisions, creates a new corporate alternative minimum tax (“CAMT”) of at least 15% for certain large corporations that have at least an average of \$1 billion in adjusted financial statement income over a consecutive three-year period effective after December 31, 2022. The IRA also includes a 1% excise tax on certain stock repurchases beginning in 2023. We do not expect to meet the CAMT threshold in the near term. However, we expect a material portion of our U.S. produced batteries and battery cells, including our proprietary TPPL batteries, will qualify for production tax credits under Section 45X of the IRA.
- In 2021, the Organization for Economic Cooperation Development (the “OECD”), through an association of more than 140 countries, announced a consensus around a two-pillar approach to address tax challenges presented by digital commerce. “Pillar 1” focuses on nexus and profit allocation, and “Pillar 2” focuses on a minimum global effective tax rate of 15%. On December 15, 2022, the European Union adopted the Pillar Two directive and EU member states are expected to implement Pillar Two into domestic law by December 31, 2023.

We closely monitor these developments in the countries where we operate. Changes to the statutory tax rate may occur at any time, and any related expense or benefit recorded may be material to the fiscal quarter and year in which the law change is enacted. The European Commission has conducted investigations in multiple countries focusing on whether local country tax rulings or tax legislation provides preferential tax treatment that violates European Union state aid rules and concluded that certain countries, have provided illegal state aid in certain cases. These investigations may result in changes to the tax treatment of our foreign operations. Due to the large and expanding scale of our international business activities, many of these types of changes to the taxation of our activities could increase our worldwide effective tax rate and adversely affect our business, financial position and results of operations. Such changes may also apply retroactively to our historical operations and result in taxes greater than the amounts estimated and recorded in our financial statements.

In relation to the IRA, we expect to receive production tax credits for certain of our products produced in the US, however, the exact impact of these changes is not fully known and may, in some circumstances, depend on guidance issued by the U.S. Department of the Treasury (“Treasury”) regarding the interpretation and implementation of the IRA. Treasury has issued only limited interpretations and additional guidance may be forthcoming. If and when issued, such guidance may impose further requirements or limitations. These and any other changes to government incentives that impose additional restrictions could increase costs, limit our ability to utilize tax benefits, or adversely impact our growth, which could have a material adverse effect on our business, financial condition and results of operations. There can be no assurance that our products will meet the

requirements for the tax credits and compliance with such requirements could increase our labor and other costs. Any reduction in rebates, tax credits or other financial incentives available to manufacturers could negatively affect the market and adversely impact our business operations and expansion potential. In addition, there is no assurance we will have the necessary tax attributes to utilize any such credits that are available and may not be able to monetize such credits on favorable terms.

In connection with the OECD's Base Erosion and Profit Shifting (BEPS) project, companies are required to disclose more information to tax authorities on operations around the world, which may lead to greater audit scrutiny of profits earned in other countries. We regularly assess the likely outcomes of our tax audits and disputes to determine the appropriateness of our tax reserves. However, any tax authority could take a position on tax treatment that is contrary to our expectations, which could result in tax liabilities in excess of reserves.

## Legal and Regulatory Risks

*Our operations expose us to environmental, health and safety and other legal compliance risks, and any noncompliance could adversely affect our business.*

As a global business, we are subject to extensive environmental liability on our operations due to current environmental laws and regulations in the jurisdictions we operate.

If convicted or found liable for violation of a law or regulation, we could be subject to significant fines, penalties, repayments or other damages. Laws and regulations may also change from time to time, as may related interpretations and other guidance, resulting in potentially higher expenses and payments and affect how we conduct our operations and structure our investments.

We process, store, dispose of and otherwise use large amounts of hazardous materials, especially lead and acid in the manufacturing of our products. As a result, we are subject to extensive and changing environmental, health and safety laws and regulations governing, among other things: the generation, handling, storage, use, transportation and disposal of hazardous materials; remediation of polluted ground or water; emissions or discharges of hazardous materials into the ground, air or water; and the health and safety of our employees. Failure to comply with these laws or regulations, or to obtain or comply with required environmental permits, could result in fines, criminal charges or other sanctions by regulators. From time to time we have had instances of alleged or actual noncompliance that have resulted in the imposition of fines, penalties and required corrective actions. Our ongoing compliance with environmental, health and safety laws, regulations and permits could require us to incur significant expenses, limit our ability to modify or expand our facilities or continue production and require us to install additional pollution control equipment and make other capital improvements. In addition, private parties, including current or former employees, could bring personal injury or other claims against us due to the presence of, or exposure to, hazardous substances used, stored or disposed of by us or contained in our products.

Certain environmental laws assess liability on owners or operators of real property for the cost of investigation, removal or remediation of hazardous substances at their current or former properties. These laws may also assess costs to repair damage to natural resources. We may be responsible for remediating damage to our properties caused by former owners. Soil and groundwater contamination has occurred at some of our current and former properties and may occur or be discovered at other properties in the future. In accordance with regulatory permits, we are currently investigating and monitoring soil and groundwater contamination at several of our properties, in most cases as required by regulatory permitting processes. We may be required to conduct these operations at other properties in the future. In addition, we have been, and in the future, may be liable to contribute to the cleanup of locations owned or operated by other persons to which we or our predecessor companies have sent waste for disposal, pursuant to federal and other environmental laws. Under these laws, the owner or operator of contaminated properties and companies that generated, disposed of or arranged for the disposal of wastes sent to a contaminated disposal facility can be held jointly and severally liable for the investigation and cleanup of such properties, regardless of fault. Additionally, our products may become subject to fees and taxes in order to fund cleanup of such properties, including those operated or used by other lead-battery industry participants.

Changes in environmental and climate-related laws and regulations could lead to new or additional investment in production designs and could increase environmental compliance expenditures. For example, the European Union has enacted greenhouse gas emissions legislation, and continues to expand the scope of such legislation. The United States Environmental Protection Agency has promulgated regulations applicable to projects involving greenhouse gas emissions above a certain threshold, and the United States and certain states within the United States have enacted, or are considering, limitations on greenhouse gas emissions.

Changes in climate change concerns, or in the regulation of such concerns, including greenhouse gas emissions, could subject us to additional costs and restrictions, including increased energy and raw materials costs. Additionally, we cannot assure you that we have been or at all times will be in compliance with environmental laws and regulations or that we will not be required to expend significant funds to comply with, or discharge liabilities arising under, environmental laws, regulations and permits, or that we will not be exposed to material environmental, health or safety litigation.

*We are subject to a wide variety of domestic and foreign laws and regulations that could adversely affect our business, financial condition and results of operations.*

We are subject to a wide variety of domestic and foreign laws and regulations, and legal compliance risks, including securities laws, tax laws, data privacy laws, employment and pension-related laws, competition laws, U.S. and foreign export and trade laws, government procurement regulations, and laws governing improper business practices. We are affected by both new laws and regulations, and changes to existing laws and regulations which may continue to evolve through interpretations by courts and regulators. Furthermore, the laws and regulations to which we are subject may differ from jurisdiction to jurisdiction, further increasing the cost of compliance and the risk of noncompliance.

In particular, the U.S. Foreign Corrupt Practices Act (“FCPA”) and similar worldwide anti-bribery laws in non-U.S. jurisdictions generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. The FCPA applies to companies, individual directors, officers, employees and agents. Under the FCPA, U.S. companies may be held liable for actions taken by strategic or local partners or representatives. The FCPA also imposes accounting standards and requirements on publicly traded U.S. corporations and their foreign affiliates, which are intended to prevent companies and their intermediaries from making improper payments to non-U.S. government officials for the purpose of obtaining or retaining business. Certain of our customer relationships outside of the U.S. are with governmental entities and are therefore subject to such anti-bribery laws. Our policies mandate compliance with these anti-bribery laws. Despite meaningful measures that we undertake to facilitate lawful conduct, which include training and internal control policies, these measures may not always prevent reckless or criminal acts by our employees or agents. As a result, we could be subject to criminal and civil penalties, disgorgement, further changes or enhancements to our procedures, policies and controls, personnel changes or other remedial actions. Violations of these laws, or allegations of such violations, could disrupt our operations, involve significant management distraction and result in a material adverse effect on our competitive position, results of operations, cash flows or financial condition.

*Complying or failing to comply with conflict minerals regulations could materially and adversely affect our supply chain, our relationships with customers and suppliers and our financial results.*

We are currently subject to conflict mineral disclosure regulations in the U.S. and may be affected by new regulations concerning conflict and similar minerals adopted by other jurisdictions where we operate. U.S. legislation included disclosure requirements regarding the use of conflict minerals mined from the Democratic Republic of Congo and adjoining countries and procedures regarding a manufacturer’s efforts to prevent the sourcing of such conflict minerals. In addition, the European Union adopted an EU-wide conflict minerals rule under which most EU importers of tin, tungsten, tantalum, gold and their ores will have to conduct due diligence to ensure the minerals do not originate from conflict zones and do not fund armed conflicts. We have and will continue to incur added costs to comply with the disclosure requirements, including costs related to determining the source of such minerals used in our products. We may not be able to ascertain the origins of such minerals that we use and may not be able to satisfy requests from customers to certify that our products are free of conflict minerals. These requirements also could constrain the pool of suppliers from which we source such minerals. We may be unable to obtain conflict-free minerals at competitive prices which will increase costs and may materially and adversely affect our manufacturing operations and profitability.

*Our failure to comply with data privacy regulations could adversely affect our business.*

There are new and emerging data privacy laws, as well as frequent updates and changes to existing data privacy laws, in most jurisdictions in which we operate. Given the complexity of these laws and the requirements they place on businesses regarding the collection, storage, handling, use, disclosure, transfer and security of personal data, it is important for us to understand their impact and respond accordingly. Failure to comply with data privacy laws can result in substantial fines or penalties, legal liability or reputational damage.

In the UK and Europe, the General Data Protection Regulation (the “GDPR”), which came into effect in 2018, places stringent requirements on companies when handling personal data and there continues to be a growing trend of other countries adopting similar laws, including Canada. Additionally, there continues to be significant uncertainty with respect to the California Consumer Privacy Act of 2018 (the “CCPA”), which went into effect on January 1, 2020, and imposes additional obligations on companies regarding the handling of personal information and provides certain individual privacy rights to persons whose information is collected. Both the GDPR and the CCPA are continuously evolving and developing and may be interpreted and applied differently from jurisdiction to jurisdiction and may create inconsistent or conflicting requirements. For example, the California Privacy Rights Act, which was approved by California voters as a ballot initiative in November 2020, modifies the CCPA significantly, further enhancing and extending an individual’s rights over their personal data and the obligations placed on companies that handle this data. The resulting new regulations became effective on January 1, 2023. Most notably, employee and business data were brought into scope, which raises the compliance requirements for us significantly, in terms of internal controls, processes and governance requirements. Furthermore, since 2020, several other U.S. states have enacted (and

additional U.S. states are considering) stringent consumer privacy laws, which may impose varying standards and requirements on our data collection, use and processing activities. Continued state by state introduction of privacy laws could lead to significantly greater complexity in our compliance requirements globally, which could result in complaints from data subjects or action from regulators.

If we are not able to respond, adapt and implement the necessary requirements to ensure compliance with data privacy laws, this could adversely impact our reputation and we could face exposure to fines levied by regulators. As a result, our business, financial position and results of operations could be materially adversely affected.

*The reduction, modification, elimination or expiration of government incentives for, or regulations regarding, the use of energy systems and batteries could reduce demand for our products and harm our business.*

Federal, state, local and foreign government bodies provide incentives to owners, end-users, distributors, system integrators and manufacturers of energy systems and batteries in the form of rebates, tax credits and other financial incentives. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or may be reduced or terminated as a matter of regulatory or legislative policy.

The IRA expanded and extended the tax credits and other tax benefits available to energy systems projects and the battery supply chain. We believe this law will bolster and extend future demand for our products in the United States. However, we note that implementing regulations for this law are still in process, which creates uncertainty about the extent of its impact on us and our industry.

In addition, similar incentives may exist in, or be developed outside of, the United States, which could impact demand for our products and services as we expand our business into foreign jurisdictions. Our international customers and end-users may have access to tax deductions and grants toward equipment purchases. Our ability to successfully penetrate new geographic markets may depend on new countries adopting, to the extent such incentives are not currently in place and maintaining such incentives.

## **General Risk Factors**

*There can be no assurance that we will continue to declare cash dividends at all or in any particular amounts, and any reduction in or elimination of our dividend payment could reduce the market price of our stock.*

We intend to pay quarterly cash dividends subject to capital availability and periodic determinations by our Board of Directors that cash dividends are in the best interest of our stockholders. Future payment of a regular quarterly cash dividend on our common shares will be subject to, among other things, our results of operations, cash balances and future cash requirements, financial condition, statutory requirements of Delaware law, compliance with the terms of existing and future indebtedness and credit facilities, changes in federal and state income tax laws, changes in our business model and other factors that our Board of Directors may deem relevant. Our dividend payments may change from time to time, and we cannot assure you that we will continue to declare dividends at all or in any particular amounts. A reduction in or elimination of our dividend payments could have a negative effect on our share price.

*We cannot guarantee that our share repurchase programs will be fully consummated or that they will enhance long-term stockholder value. Share repurchases could also increase the volatility of the market price of our stock and diminish our cash reserves.*

Our Board of Directors has authorized two share repurchase programs. These programs authorize the repurchase of up to a combined \$250 million of our common stock, of which authority, as of March 31, 2023, approximately \$185 million remains available. The other program authorizes the repurchase of up to such number of shares as shall equal the dilutive effects of any equity-based award granted during such fiscal year and the number of shares exercised through stock option awards during such fiscal year. Although our Board of Directors has authorized these share repurchase programs, the programs do not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares. We cannot guarantee that the programs will be fully consummated or that they will enhance long-term stockholder value. The programs could affect the trading price of our stock and increase volatility, and any announcement of a termination of these programs may result in a decrease in the market price of our stock. In addition, these programs could diminish our cash reserves.

*We depend on our senior management team and other key employees, and significant attrition within our management team or unsuccessful succession planning could adversely affect our business.*

Our success depends in part on our ability to attract, retain and motivate senior management and other key employees. Achieving this objective may be difficult due to many factors, including fluctuations in global economic and industry conditions, competitors' hiring practices, cost reduction activities, and the effectiveness of our compensation programs. Competition for qualified personnel can be very intense. We must continue to recruit, retain and motivate senior management

and other key employees sufficient to maintain our current business and support our future projects. We are vulnerable to attrition among our current senior management team and other key employees. A loss of any such personnel, or the inability to recruit and retain qualified personnel in the future, could have a material adverse effect on our business, financial condition and results of operations. In addition, if we are unsuccessful in our succession planning efforts, the continuity of our business and our results of operations could be materially adversely affected.

*If our internal controls are found to be ineffective, our results of operations or our stock price may be adversely affected.*

Our most recent evaluation resulted in our conclusion that, as of March 31, 2023, our internal control over financial reporting was effective. We believe that we currently have adequate internal control procedures in place for future periods, including processes related to newly acquired businesses. However, if our internal control over financial reporting is found to be ineffective, investors may lose confidence in the reliability of our financial statements, which may adversely affect our results of operations or stock price.

*Changes in accounting principles and guidance could result in unfavorable accounting charges or effects, which could adversely affect our business.*

We prepare our consolidated financial statements in conformity with accounting principles generally accepted in the U.S. Any change in these principles could have a significant effect on our reported financial position and financial results. The adoption of new or revised accounting principles may require us to make changes to our systems, processes and internal controls, which could have a significant effect on our reported financial results and internal controls, cause unexpected financial reporting fluctuations, retroactively affect previously reported results or require us to make costly changes to our operational processes and accounting systems upon our following the adoption of these standards. Any of these results could adversely affect our business.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

The Company's worldwide headquarters is located in Reading, Pennsylvania, U.S.A. Headquarters for our Americas and EMEA operations are located in Reading, Pennsylvania, U.S.A., and Zug, Switzerland, respectively. The Company owns approximately 80% of its manufacturing facilities and distribution centers worldwide. The following sets forth the Company's principal owned or leased facilities:

Americas: Sylmar, California; Longmont, Colorado; Tampa, Florida; Suwanee, Georgia; Hays, Kansas; Richmond, Kentucky; Springfield and Warrensburg, Missouri; Horsham, Pennsylvania; Sumter, South Carolina; Ooltewah, Tennessee; Spokane and Bellingham, Washington in the United States. Burnaby, Canada; Monterrey and Tijuana, Mexico; Buenos Aires, Argentina and São Paulo, Brazil.

EMEA: Hostomice, Czech Republic; Arras, France; Bielsko-Biala, Poland; Stockholm, Sweden; Newport and Culham, United Kingdom.

Asia: Chongqing and Yangzhou, the PRC.

We consider our plants and facilities, whether owned or leased, to be in satisfactory condition and adequate to meet the needs of our current businesses and projected growth. Information as to material lease commitments is included in Note 3 - Leases to the Consolidated Financial Statements.

**ITEM 3. LEGAL PROCEEDINGS**

From time to time, we are involved in litigation incidental to the conduct of our business. See Litigation and Other Legal Matters in Note 19 - Commitments, Contingencies and Litigation to the Consolidated Financial Statements, which is incorporated herein by reference.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market Information**

The Company's common stock has been listed on the New York Stock Exchange under the symbol "ENS" since it began trading on July 30, 2004. Prior to that time, there had been no public market for our common stock.

**Holders of Record**

As of May 19, 2023, there were approximately 600 record holders of common stock of the Company. Because many of these shares are held by brokers and other institutions on behalf of stockholders, the Company is unable to estimate the total number of stockholders represented by these record holders.

**Recent Sales of Unregistered Securities**

During the fourth quarter of fiscal 2023, we did not issue any unregistered securities.

**Dividends**

During fiscal 2023, the Company's quarterly dividend was \$0.175 per share. The Company declared aggregate regular cash dividends of \$0.70 per share in each of the years ended March 31, 2023, March 31, 2022 and 2021.

The Company anticipates that it will continue to pay quarterly cash dividends in the future. However, the payment and amount of future dividends remain within the discretion of the Board and will depend upon the Company's future earnings, financial condition, capital requirements, restrictions under existing or future credit facilities or debt and other factors. See "There can be no assurance that we will continue to declare cash dividends at all or in any particular amounts." Under Item 1A. Risk Factors for additional information.

**Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

The following table summarizes the number of shares of common stock we purchased from participants in our equity incentive plans, as well as repurchases of common stock authorized by the Board of Directors. As provided by the Company's equity incentive plans, (a) vested options outstanding may be exercised through surrender to the Company of option shares or vested options outstanding under the Company's equity incentive plans to satisfy the applicable aggregate exercise price (and any withholding tax) required to be paid upon such exercise and (b) the withholding tax requirements related to the vesting and settlement of equity awards may be satisfied by the surrender of shares of the Company's common stock.

Period	<b>Purchases of Equity Securities</b>			
	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may be purchased under the plans or programs <sup>(1)(2)(3)</sup>
January 2 - January 31, 2023	—	\$ —	—	\$ 185,545,418
February 1 - March 1, 2023	49,934	75.92	—	185,545,418
March 2 - March 31, 2023	62	74.60	—	185,545,418
Total	<u>49,996</u>	<u>\$ 75.92</u>	<u>—</u>	<u>—</u>

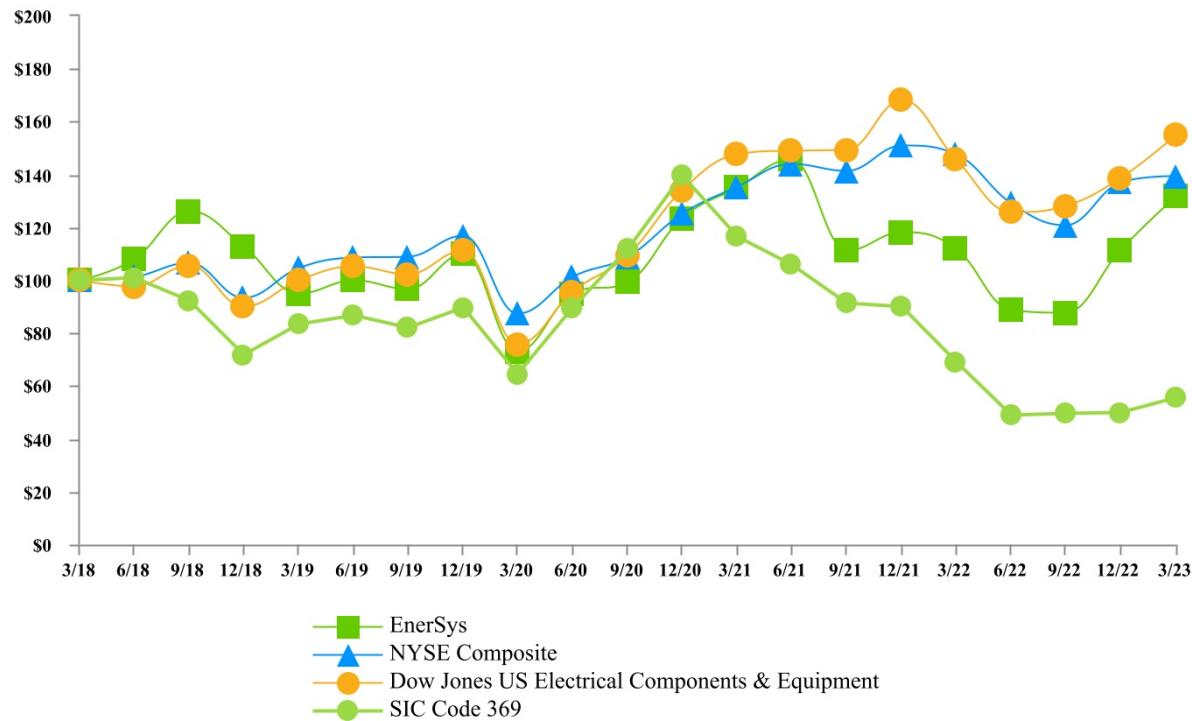
<sup>(1)</sup> The Company's Board of Directors has authorized the Company to repurchase up to such number of shares as shall equal the dilutive effects of any equity based award granted, approximately \$25.0 million, during such fiscal year under the 2017 Equity Incentive Plan and the number of shares exercised through stock option awards during such fiscal year.

<sup>(2)</sup> On March 9, 2022, the Company announced the establishment of a \$150.0 million stock repurchase authorization, with no expiration date.

<sup>(3)</sup> On November 10, 2021, the Company announced the establishment of a \$100 million stock repurchase authorization, with no expiration date.

**STOCK PERFORMANCE GRAPH**

The following graph compares the changes in cumulative total returns on EnerSys' common stock with the changes in cumulative total returns of the New York Stock Exchange Composite Index, a broad equity market index; the Dow Jones US Electrical Components and Equipment index ("DJUSEC"); and the peer group standard industrial classification codes ("SIC Codes"), which was used as a comparable index in fiscal 2022. The Company determined that the DJUSEC index provides a publicly available index of industry peers with similar market capitalization.

**Comparison Of Five Year Cumulative Total Return\*  
For Year Ended March 31, 2023****Among EnerSys, the NYSE Composite Index, DJUSEC, and SIC Code 369**

\*\$100 invested on March 31, 2018 in stock or index, including reinvestment of dividends.

**ITEM 6. [RESERVED]**

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

The following discussion and analysis of our results of operations and financial condition for the fiscal years ended March 31, 2023 and 2022, should be read in conjunction with our audited Consolidated Financial Statements and the notes to those statements included in Item 8, Financial Statements and Supplementary Data, of this Annual Report on Form 10-K. Our discussion and analysis of our results of operations and financial condition for the fiscal years ended March 31, 2022 and 2021, has been omitted from this Form 10-K and can be found in Part II, "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" of our Annual Report on Form 10-K for the fiscal year ended March 31, 2022. Our discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties, such as our plans, objectives, opinions, expectations, anticipations and intentions and beliefs. Actual results and the timing of events could differ materially from those anticipated in those forward-looking statements as a result of a number of factors. See "Cautionary Note Regarding Forward-Looking Statements," "Business" and "Risk Factors," sections elsewhere in this Annual Report on Form 10-K. In the following discussion and analysis of results of operations and financial condition, certain financial measures may be considered "non-GAAP financial measures" under the SEC rules. These rules require supplemental explanation and reconciliation, which is provided in this Annual Report on Form 10-K.

EnerSys' management uses the non-GAAP measures, EBITDA and adjusted EBITDA, in its computation of compliance with loan covenants and adjusted EBITDA in evaluating its financial performance. These measures, as used by EnerSys, adjust net earnings determined in accordance with GAAP for interest, taxes, depreciation and amortization, and certain charges or credits as permitted by our credit agreements, that were recorded during the periods presented.

These non-GAAP disclosures have limitations as analytical tools, should not be viewed as a substitute for cash flow or operating earnings determined in accordance with GAAP, and should not be considered in isolation or as a substitute for analysis of the Company's results as reported under GAAP, nor are they necessarily comparable to non-GAAP performance measures that may be presented by other companies. This supplemental presentation should not be construed as an inference that the Company's future results will be unaffected by similar adjustments to operating earnings determined in accordance with GAAP.

**Overview**

EnerSys (the "Company," "we," or "us") is a world leader in stored energy solutions for industrial applications. We also manufacture and distribute energy systems solutions and motive power batteries, specialty batteries, battery chargers, power equipment, battery accessories and outdoor equipment enclosure solutions to customers worldwide. Energy Systems which combine enclosures, power conversion, power distribution and energy storage are used in the telecommunication and broadband, utility industries, uninterruptible power supplies, and numerous applications requiring stored energy solutions. Motive Power batteries and chargers are utilized in electric forklift trucks and other industrial electric powered vehicles. Specialty batteries are used in aerospace and defense applications, large over the road trucks, premium automotive and medical. We also provide aftermarket and customer support services to over 10,000 customers in more than 100 countries through a network of distributors, independent representatives and our internal sales force around the world.

The Company's chief operating decision maker, or CODM (the Company's Chief Executive Officer), reviews financial information for purposes of assessing business performance and allocating resources, by focusing on the lines of business on a global basis. The Company excludes certain items that are not included in the segment performance as these are managed and viewed on a consolidated basis. The Company identifies the following as its three operating segments, based on lines of business:

- **Energy Systems** - uninterruptible power systems, or "UPS" applications for computer and computer-controlled systems used in data centers, as well as telecommunications systems, switchgear and electrical control systems used in industrial facilities and electric utilities, large-scale energy storage and energy pipelines. Energy Systems also includes highly integrated power solutions and services to broadband, telecom, renewable and industrial customers, as well as thermally managed cabinets and enclosures for electronic equipment and batteries.
- **Motive Power** - power for electric industrial forklifts used in manufacturing, warehousing and other material handling applications as well as mining equipment, diesel locomotive starting and other rail equipment; and
- **Specialty** - premium batteries for starting, lighting and ignition applications in premium automotive and large over-the-road trucks, energy storage solutions for satellites, military land vehicles, aircraft, submarines, tactical vehicles, as well as medical devices and equipment.

We evaluate business segment performance based primarily upon operating earnings exclusive of highlighted items. Highlighted items are those that the Company deems are not indicative of ongoing operating results, including those charges that the Company incurs as a result of restructuring activities, impairment of goodwill and indefinite-lived intangibles and other assets, acquisition activities and those charges and credits that are not directly related to operating unit performance, such as significant legal proceedings, ERP system implementation, amortization of recently acquired intangible assets and tax valuation allowance changes, including those related to the adoption of the Tax Cuts and Jobs Act. Because these charges are not incurred as a result of ongoing operations, or are incurred as a result of a potential or previous acquisition, they are not as helpful a measure of the performance of our underlying business, particularly in light of their unpredictable nature and are difficult to forecast. All corporate and centrally incurred costs are allocated to the business segments based principally on net sales. We evaluate business segment cash flow and financial position performance based primarily upon capital expenditures and primary operating capital levels.

Our management structure, financial reporting systems, and associated internal controls and procedures, are all consistent with our three lines of business. We report on a March 31 fiscal year-end. Our financial results are largely driven by the following factors:

- global economic conditions and general cyclical patterns of the industries in which our customers operate;
- changes in our selling prices and, in periods when our product costs increase, our ability to raise our selling prices to pass such cost increases through to our customers;
- the extent to which we are able to efficiently utilize our global manufacturing facilities and optimize our capacity;
- the extent to which we can control our fixed and variable costs, including those for our raw materials, manufacturing, distribution and operating activities;
- changes in our level of debt and changes in the variable interest rates under our credit facilities; and
- the size and number of acquisitions and our ability to achieve their intended benefits.

## **Current Market Conditions**

### ***Economic Climate***

The economic climate in North America, China and EMEA began to slow in the first half of calendar 2022 after experiencing strong growth during calendar 2021. All regions are experiencing a rise in inflation and are being negatively impacted by the war in Ukraine, however the rate of inflation broadly began to slow at the end of the year and into calendar year 2023. We expect interest rates to continue to increase in the U.S. and the euro zone. China's economy faced further headwinds caused by continued COVID-19 lockdowns due to rising cases and its zero-Covid approach through the majority of the year. In calendar year 2023, China reopened its borders for the first time in three years and, as a result, its economy is expected to experience moderate growth. The U.S. economy is expected to continue to slow in calendar 2023 while EMEA is expected to be flat to slightly up.

EnerSys is experiencing some supply chain disruptions and cost spikes in certain materials such as steel, copper, plastic resins, acid, pasting paper and electronic components, while transportation and related logistics challenges are improving with broad-based costs declining from peak levels. In addition, some locations experienced difficulty meeting hiring goals for the majority of the fiscal year. Generally, our mitigation efforts and the recent economic recovery have tempered the impact of the pandemic-related challenges. The overall market demand for our products and services remains robust.

### ***Volatility of Commodities and Foreign Currencies***

Our most significant commodity and foreign currency exposures are related to lead and the Euro, respectively. Historically, the volatility of commodity costs and foreign currency exchange rates have caused large swings in our production costs. Since the beginning of fiscal year 2023, we have experienced a range in lead prices from just above \$1.10 per pound to approximately \$0.85 per pound. We are experiencing increasing costs in some of our other raw materials such as steel, copper, plastic resins, acid, separator paper and electronics. We also experienced increased freight costs through most of the year, but saw a decline in the fourth quarter.

### ***Customer Pricing***

Our selling prices fluctuated during the last several years to offset the volatile cost of commodities. Approximately 30% of our revenue is now subject to agreements that adjust pricing to a market-based index for lead. Customer pricing changes generally lag movements in lead prices and other costs by approximately six to nine months. In fiscal 2023, customer pricing has increased due to higher raw material prices and shipping costs, labor and other costs having increased throughout the year.

Based on the current volatility of the commodity markets, it is difficult to predict with certainty whether commodity prices will be higher or lower in fiscal 2024 versus fiscal 2023. However, given the lag related to increasing our selling prices for inflationary cost increases, on average our selling prices should be higher in fiscal 2024 versus fiscal 2023. As we concentrate more on energy systems and non-lead chemistries, the emphasis on lead will continue to decline.

### **Primary Operating Capital**

As part of managing the performance of our business, we monitor the level of primary operating capital, and its ratio to net sales. We define primary operating capital as accounts receivable, plus inventories, minus accounts payable. The resulting net amount is divided by the trailing three month net sales (annualized) to derive a primary operating capital percentage. We believe these three elements included in primary operating capital are most operationally driven, and this performance measure provides us with information about the asset intensity and operating efficiency of the business on a company-wide basis that management can monitor and analyze trends over time. Primary operating capital was \$1,057.0 million (yielding a primary operating capital percentage of 26.7%) at March 31, 2023 and \$1,042.0 million (yielding a primary working operating percentage of 28.7%) at March 31, 2022. The primary operating percentage of 26.7% at March 31, 2023 is 200 basis points lower than that for March 31, 2022, and 220 basis points higher than that for March 31, 2021. The change in the ratio is a result of the continued supply chain constraints, inflationary pressures across our business, and strategic inventory build that have outweighed benefits received from the sale of \$150.0 million in accounts receivables through a Receivables Purchase Agreement (RPA) entered into during the third quarter of fiscal 2023.

Primary Operating Capital and Primary Operating Capital percentages at March 31, 2023, 2022 and 2021 are computed as follows:

(\$ in Millions)	<b>March 31, 2023</b>	<b>March 31, 2022</b>	<b>March 31, 2021</b>
Accounts receivable, net	\$ 637.8	\$ 719.4	\$ 603.6
Inventory, net	797.8	715.7	518.2
Accounts payable	(378.6)	(393.1)	(323.9)
Total primary operating capital	<u>\$ 1,057.0</u>	<u>\$ 1,042.0</u>	<u>\$ 797.9</u>
Trailing 3 months net sales	\$ 989.9	\$ 907.0	\$ 813.5
Trailing 3 months net sales annualized	<u>\$ 3,959.6</u>	<u>\$ 3,628.1</u>	<u>\$ 3,254.2</u>
Primary operating capital as a % of annualized net sales	26.7 %	28.7 %	24.5 %

### **Liquidity and Capital Resources**

We believe that our financial position is strong. We have substantial liquidity with \$347 million of available cash and cash equivalents and available and undrawn, under all its lines of credit of approximately \$693 million at March 31, 2023 to cover short-term liquidity requirements and anticipated growth in the foreseeable future. The nominal amount of credit available is subject to a leverage ratio maximum of 4.25x EBITDA, as discussed in *Liquidity and Capital Resources*.

During the second quarter of fiscal 2023, the Company entered into a third amendment to the 2017 Credit Facility (as amended, the “Third Amended Credit Facility”). The Third Amended Credit Facility provided new incremental delayed-draw senior secured term loan up to \$300 million (the “Third Amended Term Loan”), which was available to draw until March 15, 2023. During the fourth quarter, the Company drew \$300 million in the form of the Third Amended Term Loan. The funds will mature on September 30, 2026, the same as the Company’s Second Amended Term loan and Second Amended Revolver. In connection with the agreement, the Company incurred \$1.2 million in third party administrative and legal fees recognized in interest expense and capitalized \$1.1 million in charges from existing lenders as a deferred asset. Additionally, the Company derecognized the capitalized deferred asset and recognized the \$1.1 million as a deferred financing costs.

During the fourth quarter of fiscal 2023, the Company entered into a fourth amendment to the 2017 Credit Facility (as amended, the “Fourth Amended Credit Facility”). The Fourth Amended Credit Facility replaces the London Interbank Offered Rate

(“LIBOR”) with the Secured Overnight Financing Rate (“SOFR”) in the calculation of interest for both the Second Amended Revolver and the Second Amended Term Loan.

During the second quarter of fiscal 2022, we entered into a second amendment to the Amended Credit Facility (as amended, the “Second Amended Credit Facility”). As a result, the Second Amended Credit Facility, now scheduled to mature on September 30, 2026, consists of a \$130.0 million senior secured term loan (the “Second Amended Term Loan”), a CAD 106.4 million (\$84.2 million) term loan and an \$850.0 million senior secured revolving credit facility (the “Second Amended Revolver”). This amendment resulted in a decrease of the Amended Term Loan by \$150.0 million and an increase of the Amended Revolver by \$150.0 million.

During fiscal 2023, our operating cash flow provided cash of \$279.9 million, compared to a use of funds of \$65.6 million in the prior year. The change in the operating cash flows in fiscal 2023 was primarily due to the decreases in primary operating capital dollars, compared to the prior year, reflecting the impact sold receivables as a part of our asset securitization agreement and less of an increase in inventory compared to the prior year.

In fiscal 2023 and 2022, we repurchased 358,365 and 1,996,334 shares of common stock for \$22.9 million and \$156.4 million, respectively. In fiscal 2021, we did not repurchase any shares.

A substantial majority of the Company’s cash and investments are held by foreign subsidiaries. The majority of that cash and investments is expected to be utilized to fund local operating activities, capital expenditure requirements and acquisitions. The Company believes that it has sufficient sources of domestic and foreign liquidity.

The Federal Reserve Bank of the United States has discontinued quantitative easing and, started raising short-term interest rates and has signaled they will continue to raise interest rates. The increase in short-term interest rates will increase EnerSys’ variable cost of borrowing under the Fourth Amended Credit Facility.

We believe that our strong capital structure and liquidity affords us access to capital for future capital expenditures, acquisition and stock repurchase opportunities and continued dividend payments.

## Critical Accounting Policies and Estimates

Our significant accounting policies are described in Note 1 - Summary of Significant Accounting Policies to the Consolidated Financial Statements in Item 8. In preparing our financial statements, management is required to make estimates and assumptions that, among other things, affect the reported amounts in the Consolidated Financial Statements and accompanying notes. These estimates and assumptions are most significant where they involve levels of subjectivity and judgment necessary to account for highly uncertain matters or matters susceptible to change, and where they can have a material impact on our financial condition and operating performance. We discuss below the more significant estimates and related assumptions used in the preparation of our Consolidated Financial Statements. If actual results were to differ materially from the estimates made, the reported results could be materially affected.

### *Revenue Recognition*

In accordance with ASC 606, we recognize revenue only when we have satisfied a performance obligation through transferring control of the promised good or service to a customer. The standard indicates that an entity must determine at contract inception whether it will transfer control of a promised good or service over time or satisfy the performance obligation at a point in time through analysis of the following criteria: (i) the entity has a present right to payment, (ii) the customer has legal title, (iii) the customer has physical possession, (iv) the customer has the significant risks and rewards of ownership and (v) the customer has accepted the asset. Our primary performance obligation to our customers is the delivery of finished goods and products, pursuant to purchase orders. Control of the products sold typically transfers to our customers at the point in time when the goods are shipped as this is also when title generally passes to our customers under the terms and conditions of our customer arrangements.

Management believes that the accounting estimates related to revenue recognition are critical accounting estimates because they require reasonable assurance of collection of revenue proceeds and completion of all performance obligations. Also, revenues are recorded net of provisions for sales discounts and returns, which are established at the time of sale. These estimates are based on our past experience. For additional information see Note 1 of Notes to the Consolidated Financial Statements.

## Asset Impairment Determinations

We test for the impairment of our goodwill and indefinite-lived trademarks at least annually and whenever events or circumstances occur indicating that a possible impairment has been incurred.

We assess whether goodwill impairment exists using both qualitative and quantitative assessments. The qualitative assessment involves determining whether events or circumstances exist that indicate it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. If, based on this qualitative assessment, we determine it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, or if we elect not to perform a qualitative assessment, a quantitative assessment is performed to determine whether a goodwill impairment exists at the reporting unit.

We perform our annual goodwill impairment test on the first day of our fourth quarter for each of our reporting units based on the income approach, also known as the discounted cash flow ("DCF") method, which utilizes the present value of future cash flows to estimate fair value. We also use the market approach, which utilizes market price data of companies engaged in the same or a similar line of business as that of our company, to estimate fair value. A reconciliation of the two methods is performed to assess the reasonableness of fair value of each of the reporting units.

The future cash flows used under the DCF method are derived from estimates of future revenues, operating income, working capital requirements and capital expenditures, which in turn reflect our expectations of specific global, industry and market conditions. The discount rate developed for each of the reporting units is based on data and factors relevant to the economies in which the business operates and other risks associated with those cash flows, including the potential variability in the amount and timing of the cash flows. A terminal growth rate is applied to the final year of the projected period and reflects our estimate of stable growth to perpetuity. We then calculate the present value of the respective cash flows for each reporting unit to arrive at the fair value using the income approach and then determine the appropriate weighting between the fair value estimated using the income approach and the fair value estimated using the market approach. Finally, we compare the estimated fair value of each reporting unit to its respective carrying value in order to determine if the goodwill assigned to each reporting unit is potentially impaired. If the fair value of the reporting unit exceeds its carrying value, goodwill is not impaired and no further testing is required. If the fair value of the reporting unit is less than the carrying value, an impairment charge is recognized for the amount by which the carrying amount exceeds the reporting unit's fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit.

Significant assumptions used include management's estimates of future growth rates, the amount and timing of future operating cash flows, capital expenditures, discount rates, as well as market and industry conditions and relevant comparable company multiples for the market approach. Assumptions utilized are highly judgmental, especially given the role technology plays in driving the demand for products in the telecommunications and aerospace markets.

Based on the results of the annual impairment test as of January 2, 2023, we determined that there was no goodwill impairment.

The indefinite-lived trademarks are tested for impairment by comparing the carrying value to the fair value based on current revenue projections of the related operations, under the relief from royalty method. Any excess carrying value over the amount of fair value is recognized as impairment. Any impairment would be recognized in full in the reporting period in which it has been identified.

Based on the results of the annual impairment test as of January 2, 2023, we determined that there were impairments to two indefinite-lived trademarks. For additional information see Note 7 Notes to the Consolidated Financial Statements.

With respect to our other long-lived assets other than goodwill and indefinite-lived trademarks, we test for impairment when indicators of impairment are present. An asset is considered impaired when the undiscounted estimated net cash flows expected to be generated by the asset are less than its carrying amount. The impairment recognized is the amount by which the carrying amount exceeds the fair value of the impaired asset.

## Business Combinations

We account for business combinations in accordance with ASC 805, Business Combinations. We recognize assets acquired and liabilities assumed in acquisitions at their fair values as of the acquisition date, with the acquisition-related transaction and restructuring costs expensed in the period incurred. Determining the fair value of assets acquired and liabilities assumed often involves estimates based on third-party valuations, such as appraisals, or internal valuations based on discounted cash flow analyses and may include estimates of attrition, inflation, asset growth rates, discount rates, multiples of earnings or other

relevant factors. In addition, fair values are subject to refinement for up to a year after the closing date of an acquisition. Adjustments recorded to the acquired assets and liabilities are applied prospectively.

Fair values are based on estimates using management's assumptions using future growth rates, future attrition of the customer base, discount rates, multiples of earnings or other relevant factors.

Any change in the acquisition date fair value of assets acquired and liabilities assumed may materially affect our financial position, results of operations and liquidity.

#### *Litigation and Claims*

From time to time, the Company has been or may be a party to various legal actions and investigations including, among others, employment matters, compliance with government regulations, federal and state employment laws, including wage and hour laws, contractual disputes and other matters, including matters arising in the ordinary course of business. These claims may be brought by, among others, governments, customers, suppliers and employees. Management considers the measurement of litigation reserves as a critical accounting estimate because of the significant uncertainty in some cases relating to the outcome of potential claims or litigation and the difficulty of predicting the likelihood and range of potential liability involved, coupled with the material impact on our results of operations that could result from litigation or other claims.

In determining legal reserves, management considers, among other inputs:

- interpretation of contractual rights and obligations;
- the status of government regulatory initiatives, interpretations and investigations;
- the status of settlement negotiations;
- prior experience with similar types of claims;
- whether there is available insurance coverage; and
- advice of outside counsel.

For certain matters, management is able to estimate a range of losses. When a loss is probable, but no amount of loss within a range of outcomes is more likely than any other outcome, management will record a liability based on the low end of the estimated range. Additionally, management will evaluate whether losses in excess of amounts accrued are reasonably possible, and will make disclosure of those matters based on an assessment of the materiality of those additional possible losses.

#### *Environmental Loss Contingencies*

Accruals for environmental loss contingencies (i.e., environmental reserves) are recorded when it is probable that a liability has been incurred and the amount can reasonably be estimated. Management views the measurement of environmental reserves as a critical accounting estimate because of the considerable uncertainty surrounding estimation, including the need to forecast well into the future. From time to time, we may be involved in legal proceedings under federal, state and local, as well as international environmental laws in connection with our operations and companies that we have acquired. The estimation of environmental reserves is based on the evaluation of currently available information, prior experience in the remediation of contaminated sites and assumptions with respect to government regulations and enforcement activity, changes in remediation technology and practices, and financial obligations and creditworthiness of other responsible parties and insurers.

#### *Warranty*

We record a warranty reserve for possible claims against our product warranties, which generally run for a period ranging from one to twenty years for our Energy Systems batteries, one to five years for our Motive Power batteries and for a period ranging from one to four for Specialty transportation batteries. The assessment of the adequacy of the reserve includes a review of open claims and historical experience.

Management believes that the accounting estimate related to the warranty reserve is a critical accounting estimate because the underlying assumptions used for the reserve can change from time to time and warranty claims could potentially have a material impact on our results of operations.

### *Allowance for Doubtful Accounts*

Subsequent to the adoption of ASU No. 2016-13, “Financial Instruments - Credit Losses (Topic 326)” effective April 1, 2020 the Company uses an expected loss model as mandated by the standard. The expected loss model: (i) estimates the risk of loss even when risk is remote, (ii) estimates losses over the contractual life, (iii) considers past events, current conditions and reasonable supported forecasts and (iv) has no recognition threshold.

The Company estimates the allowance for credit losses in relation to accounts receivable based on relevant qualitative and quantitative information about historical events, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported accounts receivable. Subsequent to April 1, 2020, accounts receivable are recorded at amortized cost less an allowance for expected credit losses. The Company maintains an allowance for credit losses for the expected failure or inability of its customers to make required payments. The Company recognizes the allowance for expected credit losses at inception and reassesses quarterly, based on management’s expectation of the asset’s collectability. The allowance is based on multiple factors including historical experience with bad debts, the credit quality of the customer base, the aging of such receivables and current macroeconomic conditions, as well as management’s expectations of conditions in the future. The Company’s allowance for uncollectible accounts receivable is based on management’s assessment of the collectability of assets pooled together with similar risk characteristics. The Company then adjusts the historical credit loss percentage by current and forecasted economic conditions. The Company then includes a baseline credit loss percentage into the historical credit loss percentage for each aging category to reflect the potential impact of the current and economic conditions. Such a baseline calculation will be adjusted further if changes in the economic environment impacts the Company’s expectation for future credit losses.

Management believes that the accounting estimate related to the allowance for doubtful accounts is a critical accounting estimate because the underlying assumptions used for the allowance can change from time to time and uncollectible accounts could potentially have a material impact on our results of operations.

### *Retirement Plans*

We use certain economic and demographic assumptions in the calculation of the actuarial valuation of liabilities associated with our defined benefit plans. These assumptions include the discount rate, expected long-term rates of return on assets and rates of increase in compensation levels. Changes in these assumptions can result in changes to the pension expense and recorded liabilities. Management reviews these assumptions at least annually. We use independent actuaries to assist us in formulating assumptions and making estimates. These assumptions are updated periodically to reflect the actual experience and expectations on a plan-specific basis, as appropriate.

For benefit plans which are funded, we establish strategic asset allocation percentage targets and appropriate benchmarks for significant asset classes with the aim of achieving a prudent balance between return and risk. We set the expected long-term rate of return based on the expected long-term average rates of return to be achieved by the underlying investment portfolios. In establishing this rate, we consider historical and expected returns for the asset classes in which the plans are invested, advice from pension consultants and investment advisors, and current economic and capital market conditions. The expected return on plan assets is incorporated into the computation of pension expense. The difference between this expected return and the actual return on plan assets is deferred and will affect future net periodic pension costs through subsequent amortization.

We believe that the current assumptions used to estimate plan obligations and annual expense are appropriate in the current economic environment. However, if economic conditions change materially, we may change our assumptions, and the resulting change could have a material impact on the Consolidated Statements of Income and on the Consolidated Balance Sheets.

### *Equity-Based Compensation*

We recognize compensation cost relating to equity-based payment transactions by using a fair-value measurement method whereby all equity-based payments to employees, including grants of restricted stock units, stock options, market and performance condition-based awards are recognized as compensation expense based on fair value at grant date over the requisite service period of the awards. We determine the fair value of restricted stock units based on the quoted market price of our common stock on the date of grant. The fair value of stock options is determined using the Black-Scholes option-pricing model, which uses both historical and current market data to estimate the fair value. The fair value of market condition-based awards is estimated at the date of grant using a Monte Carlo Simulation. The fair value of performance condition-based awards is based on the closing stock price on the date of grant, adjusted for a discount to reflect the illiquidity inherent in these awards.

All models incorporate various assumptions such as the risk-free interest rate, expected volatility, expected dividend yield and expected life of the awards. When estimating the requisite service period of the awards, we consider many related factors including types of awards, employee class, and historical experience. Actual results, and future changes in estimates of the requisite service period may differ substantially from our current estimates.

#### *Income Taxes*

Our effective tax rate is based on pretax income and statutory tax rates available in the various jurisdictions in which we operate. We account for income taxes in accordance with applicable guidance on accounting for income taxes, which requires that deferred tax assets and liabilities be recognized using enacted tax rates for the effect of temporary differences between book and tax bases on recorded assets and liabilities. Accounting guidance also requires that deferred tax assets be reduced by a valuation allowance, when it is more likely than not that a tax benefit will not be realized.

The recognition and measurement of a tax position is based on management's best judgment given the facts, circumstances and information available at the reporting date. We evaluate tax positions to determine whether the benefits of tax positions are more likely than not of being sustained upon audit based on the technical merits of the tax position. For tax positions that are more likely than not of being sustained upon audit, we recognize the largest amount of the benefit that is greater than 50% likely of being realized upon ultimate settlement in the financial statements. For tax positions that are not more likely than not of being sustained upon audit, we do not recognize any portion of the benefit in the financial statements. If the more likely than not threshold is not met in the period for which a tax position is taken, we may subsequently recognize the benefit of that tax position if the tax matter is effectively settled, the statute of limitations expires, or if the more likely than not threshold is met in a subsequent period.

We evaluate, on a quarterly basis, our ability to realize deferred tax assets by assessing our valuation allowance and by adjusting the amount of such allowance, if necessary. The factors used to assess the likelihood of realization are our forecast of future taxable income and available tax planning strategies that could be implemented to realize the net deferred tax assets.

To the extent we prevail in matters for which reserves have been established, or are required to pay amounts in excess of our reserves, our effective tax rate in a given financial statement period could be materially affected.

## Results of Operations—Fiscal 2023 Compared to Fiscal 2022

The following table presents summary Consolidated Statements of Income data for fiscal year ended March 31, 2023, compared to fiscal year ended March 31, 2022:

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales	In Millions	As % Net Sales	In Millions	%
Net sales	\$ 3,708.5	100.0 %	\$ 3,357.3	100.0 %	\$ 351.2	10.5 %
Cost of goods sold	2,867.8	77.3	2,604.7	77.6	263.1	10.1
Inventory adjustment relating to exit activities	0.6	—	2.6	0.1	(2.0)	(73.8)
Gross profit	840.1	22.7	750.0	22.3	90.1	12.0
Operating expenses	544.9	14.7	520.8	15.5	24.1	4.6
Restructuring and other exit charges	16.4	0.4	18.8	0.6	(2.4)	(12.4)
Impairment of indefinite-lived intangibles	0.5	0.1	1.2	—	(0.7)	(59.3)
Loss on assets held for sale	—	—	3.0	0.1	(3.0)	NM
Operating earnings	278.3	7.5	206.2	6.1	72.1	35.0
Interest expense	59.5	1.6	37.8	1.1	21.7	57.6
Other (income) expense, net	8.2	0.2	(5.5)	(0.2)	13.7	NM
Earnings before income taxes	210.6	5.7	173.9	5.2	36.7	21.1
Income tax expense	34.8	0.9	30.0	0.9	4.8	16.0
Net earnings attributable to EnerSys stockholders	\$ 175.8	4.8 %	\$ 143.9	4.3 %	\$ 31.9	22.2 %

NM = not meaningful

### Overview

Our sales in fiscal 2023 were \$3.7 billion, a 10.5% increase from prior year's sales. This increase was due to an 8% increase in pricing, and 7% in organic growth, partially offset by a 4% decrease in foreign currency translation impact.

A discussion of specific fiscal 2023 versus fiscal 2022 operating results follows, including an analysis and discussion of the results of our reportable segments.

### Net Sales

#### Segment sales

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	% Net Sales	In Millions	% Net Sales	In Millions	%
Energy Systems	\$ 1,738.1	46.9 %	\$ 1,536.6	45.8 %	\$ 201.5	13.1 %
Motive Power	1,451.3	39.1	1,361.2	40.5	90.1	6.6
Specialty	519.1	14.0	459.5	13.7	59.6	13.0
Total net sales	\$ 3,708.5	100.0 %	\$ 3,357.3	100.0 %	\$ 351.2	10.5 %

Net sales of our Energy Systems segment in fiscal 2023 increased \$201.5 million, or 13.1%, compared to fiscal 2022. This increase was due to a 9% increase in organic volume and an 8% increase in pricing, partially offset by a 4% decrease in foreign currency translation impact. This increase in sales was driven by an increase in pricing/mix and organic volume primarily as a result of improved component availability and pass through of higher costs, as well as organic volume primarily in Americas battery systems.

Net sales of our Motive Power segment in fiscal 2023 increased by \$90.1 million, or 6.6%, compared to fiscal 2022. This increase was due to a 9% increase in pricing and a 3% increase in organic volume partially offset by a 5% decrease in foreign currency translation impact. We continue to benefit from continued improved pricing and favorable sales mix as we grow our maintenance free products.

Net sales of our Specialty segment in fiscal 2023 increased by \$59.6 million, or 13%, compared to fiscal 2022. The increase was due to a 9% increase in organic volume and a 6% increase in pricing, partially offset by a 2% decrease in foreign currency translation impact. This increase in net sales was primarily driven by improved pricing and strong market demand.

### **Gross Profit**

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales	In Millions	As % Net Sales	In Millions	%
Gross profit	\$ 840.1	22.7 %	\$ 750.0	22.3 %	\$ 90.1	12.0 %

Gross profit increased \$90.1 million or 12.0% in fiscal 2023 compared to fiscal 2022. Gross profit, as a percentage of net sales increased 40 basis points in fiscal 2023 compared to fiscal 2022. The increase in the gross profit margin in fiscal 2023 compared to the prior year reflects the impact of organic volume increases, aggressive price recoveries, and mix improvement more than offsetting the negative impact of higher freight costs and component shortages from our supply chain along with other inflationary pressures in raw materials, labor, supplies and utilities.

On August 16, 2022, the Inflation Reduction Act of 2022 (“IRA”) was enacted. The IRA includes multiple incentives to promote clean energy, and energy storage manufacturing among other provisions with tax credits available from 2023 to 2032, subject to phase down beginning in 2030. In particular the IRA creates a refundable tax credit, pursuant to Section 45X of the Internal Revenue Code (“IRC”), for battery cells and battery modules manufactured or assembled in the United States and sold to third parties. In the period ended March 31, 2023, the IRA impact resulted in a \$17.3 million reduction of our costs of goods sold and income tax payable. We will continue to evaluate the effects of IRA as more guidance is issued and the relevant implications to our consolidated financial statements.

### **Operating Items**

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales	In Millions	As % Net Sales	In Millions	%
Operating expenses	\$ 544.9	14.7 %	\$ 520.8	15.5 %	\$ 24.1	4.6 %
Restructuring, exit and other charges	16.4	0.4	18.8	0.6	(2.4)	(12.4)
Impairment of indefinite-lived intangibles	0.5	0.1	1.2	—	(0.7)	(59.3)

### **Operating Expenses**

Operating expenses increased \$24.1 million or 4.6% in fiscal 2023 from fiscal 2022 and decreased as a percentage of net sales by 80 basis points. Selling expenses, our main component of operating expenses, increased \$6.1 million or 2.8% in fiscal 2023 compared to fiscal 2022.

### **Restructuring, exit and other charges**

*Exit Charges*

*Fiscal 2023 Programs*

*Sylmar*

In November 2022, the Company committed to a plan to close its facility in Sylmar, California, which manufactures specialty lithium batteries for aerospace and medical applications. Management determined to close the site upon the expiration of its lease on the property and to redirect production through consolidation into existing locations. The Company currently estimates total charges in the exit to amount to \$5.5 million. Cash charges are estimated to total \$4.4 million primarily relating to severance and other costs to leave the site. Non-cash charges are estimated to be \$1.1 million relating to fixed assets, inventory, and contract assets. The plan is expected to be completed in fiscal 2024.

During fiscal 2023, the Company recorded \$1.7 million primarily related to severance costs and non-cash charges totaling \$0.4 million primarily relating to contract assets.

*Ooltewah*

In June, 2022, the Company committed to a plan to close its facility in Ooltewah, Tennessee, which produced flooded motive power batteries for electric forklifts. Management determined that future demand for traditional motive power flooded cells will decrease as customers transition to maintenance free product solutions in lithium and TPPL. The Company currently estimates that the total charges for these actions will amount to approximately \$18.5 million. Cash charges for employee severance related payments, cleanup related to the facility, contractual releases and legal expenses are estimated to be \$9.2 million and non-cash charges from inventory and fixed asset write-offs are estimated to be \$9.3 million. These actions will result in the reduction of approximately 165 employees. The plan is expected to be completed in calendar 2023.

During fiscal 2023, the Company recorded cash charges relating primarily to severance and manufacturing variances of \$2.8 million and non-cash charges of \$7.3 million relating to fixed asset write-offs. The Company also recorded a non-cash write-off relating to inventories of \$1.6 million, which was reported in cost of goods sold.

*Fiscal 2022 Programs*

*Russia*

In February 2022, as a result of the Russia-Ukraine conflict, economic sanctions were imposed on Russian individuals and entities, including financial institutions, by countries around the world, including the U.S. and the European Union. On March 3, 2022, the Company announced that it was indefinitely suspending its operations in Russia in order to comply with the sanctions. As a result of this decision, the Company wrote off net assets of \$4.0 million relating to its Russian subsidiary. The Company also incurred cash charges of \$1.3 million relating to severance and exiting lease obligations. During fiscal 2023, the Company sold inventory previously written off resulting in the reversal of \$0.9 million in cost of goods sold and reversal of \$0.7 million of cash charges primarily relating to lease obligations.

*Zamudio, Spain*

During fiscal 2022, the Company closed a minor assembling plant in Zamudio, Spain and sold the same for \$1.8 million. A net gain of \$0.7 million was recorded as a credit to exit charges in the Consolidated Statements of Income.

*Fiscal 2021 Programs*

*Hagen, Germany*

In fiscal 2021, we committed to a plan to close substantially all of our facility in Hagen, Germany, which produces flooded motive power batteries for forklifts. Management determined that future demand for the motive power batteries produced at this facility was not sufficient, given the conversion from flooded to maintenance free batteries by customers, the existing number of competitors in the market, as well as the near term decline in demand and increased uncertainty from the pandemic. We plan to retain the facility with limited sales, service and administrative functions along with related personnel for the foreseeable future.

We currently estimate that the total charges for these actions will amount to approximately \$60.0 million, the majority of which were recorded by the end of calendar 2021. Cash charges of approximately \$40.0 million are primarily for employee severance

related payments, but also include payments for cleanup related to the facility, contractual releases and legal expenses. Non-cash charges from inventory and equipment write-offs are estimated to be \$20.0 million. These actions resulted in the reduction of approximately 200 employees.

During fiscal 2023, the Company recorded cash charges of \$2.2 million relating primarily to site cleanup and \$0.6 million of non-cash charges relating to accelerated depreciation of fixed assets.

During fiscal 2022, the Company recorded cash charges, primarily relating to severance of \$8.1 million and non-cash charges of \$3.5 million primarily relating to fixed asset write-offs. The Company also recorded a non-cash write off relating to inventories of \$1.0 million, which was reported in cost of goods sold.

During fiscal 2021, the Company recorded charges relating to severance of \$23.3 million and \$7.9 million primarily relating to fixed asset write-offs.

#### *Targovishte, Bulgaria*

During fiscal 2019, the Company committed to a plan to close its facility in Targovishte, Bulgaria, which produced diesel-electric submarine batteries. Management determined that the future demand for batteries of diesel-electric submarines was not sufficient given the number of competitors in the market. During fiscal 2022, the Company sold this facility for \$1.5 million. A net gain of \$1.2 million was recorded as a credit to exit charges in the Consolidated Statements of Income.

#### ***Impairment of indefinite-lived intangibles***

During the fourth quarter of fiscal 2023 and 2022, the Company recorded non-cash charges of \$0.5 million and \$1.2 million, respectively, related to impairment of indefinite-lived trademarks. Management completed its evaluation of key inputs used to estimate the fair value of its indefinite-lived trademarks and determined that an impairment charge was appropriate.

#### ***Loss on assets held for sale***

#### *Vijayawada, India*

During fiscal 2021, we also committed to a plan to close our facility in Vijayawada, India to align with the strategic vision for our new line of business structure and footprint and recorded exit charges of \$1.5 million primarily relating to asset write-offs. In fiscal 2022, the Company reclassified property, plant and equipment with a carrying value of \$4.6 million to assets held for sale on the Consolidated Balance Sheet and recognized an impairment loss of \$3.0 million under the caption *Loss on assets held for sale* on its Consolidated Statement of Income, by writing down the carrying value of these assets to their estimated fair value of \$1.6 million, based on their expected proceeds, less costs to sell. We also recorded a non-cash write off relating to inventories of \$0.8 million, which was reported in cost of goods sold.

## Operating Earnings

Operating earnings by segment were as follows:

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales <sup>(1)</sup>	In Millions	As % Net Sales <sup>(1)</sup>	In Millions	%
Energy Systems	\$ 62.2	3.6 %	\$ 18.6	1.2 %	\$ 43.6	NM
Motive Power	178.8	12.3	169.7	12.5	9.1	7.8
Specialty	37.5	7.2	43.5	9.5	(6.0)	4.3
Subtotal	278.5	7.5	231.8	6.9	46.7	27.7
Production tax credits from IRA 45X	17.3	0.5	—	—	17.3	NM
Inventory adjustment relating to exit activities - Energy Systems	0.2	—	(0.2)	—	0.4	NM
Inventory adjustment relating to exit activities - Motive Power	(0.8)	(0.1)	(2.4)	(0.2)	1.6	(63.1)
Restructuring and other exit charges - Energy Systems	(1.5)	(0.1)	(2.8)	(0.2)	1.3	(46.9)
Restructuring and other exit charges - Motive Power	(12.8)	(0.9)	(17.1)	(1.3)	4.3	(24.6)
Restructuring and other exit charges - Specialty	(2.1)	(0.4)	1.1	0.2	(3.2)	NM
Impairment of indefinite-lived intangibles - Energy Systems	(0.1)	—	(0.5)	—	0.4	NM
Impairment of indefinite-lived intangibles - Motive Power	—	—	(0.7)	—	0.7	(80.0)
Impairment of indefinite-lived intangibles - Specialty	(0.4)	(0.1)	—	—	(0.4)	NM
Loss on assets held for sale - Motive Power	—	—	(3.0)	(0.2)	3.0	NM
Total operating earnings	\$ 278.3	7.5 %	\$ 206.2	6.1 %	\$ 72.1	35.0 %

NM = not meaningful

(1) The percentages shown for the segments are computed as a percentage of the applicable segment's net sales.

Operating earnings increased \$72.1 million or 35.0% in fiscal 2023, compared to fiscal 2022. Operating earnings, as a percentage of net sales, increased 140 basis points in fiscal 2023, compared to fiscal 2022.

The Energy Systems operating earnings percentage of net sales increased 240 basis points in fiscal 2023 compared to fiscal 2022. The increase in operating earnings is as a result of improvements in pricing and volume offset by an increase in lead pricing, high inflationary costs in raw materials costs, higher freight costs, warranty/inventory provisions, and selling, general, and administrative costs.

The Motive Power operating earnings as a percentage of net sales decreased 20 basis points in fiscal 2023 compared to fiscal 2022. This decrease was driven by the impact of zero-margin pricing pass through of inflationary costs and adverse foreign currency translation impact, partially offset by improved product mix.

Specialty operating earnings percentage of net sales decreased 230 basis points in fiscal 2023 compared to fiscal 2022. Pricing and customer demand in the transportation and aerospace and defense markets were stronger in the current year compared to prior year, but capacity constraints and higher inflation costs, combined with increased operating expenses negatively impacted the performance of this line of business.

## Interest Expense

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales	In Millions	As % Net Sales	In Millions	%
Interest expense	\$ 59.5	1.6 %	\$ 37.8	1.1 %	\$ 21.7	57.6 %

Interest expense of \$59.5 million in fiscal 2023 (net of interest income of \$1.7 million) was \$21.7 million higher than the \$37.8 million in fiscal 2022 (net of interest income of \$2.1 million).

Our average debt outstanding was \$1,303.4 million in fiscal 2023, compared to our average debt outstanding of \$1,150.7 million in fiscal 2022. Our average cash interest rate incurred in fiscal 2023 and fiscal 2022 was 4.6% and 3.3%, respectively. The increase in interest expense in fiscal 2023 compared to fiscal 2022 is primarily due to higher borrowing levels, higher short term interest rates, and an additional \$1.2 million in third party administrative and legal fees related to the Third Amended Credit Facility, partially offset by the benefit from the \$300 million and \$150 million cross currency fixed interest rate swaps.

In fiscal 2023, the Company capitalized \$1.2 million in debt issuance costs in connection with the Third and Fourth Amended Credit Facilities. In fiscal 2022, in connection with the Second Amended Credit Facility, we capitalized \$3.0 million in debt issuance costs and wrote off \$0.1 million of unamortized debt issuance costs. Included in interest expense were non-cash charges related to amortization of deferred financing fees of \$2.0 million and \$2.1 million in fiscal 2023 and fiscal 2022, respectively.

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

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales	In Millions	As % Net Sales	In Millions	%
Other (income) expense, net	\$ 8.2	0.2 %	\$ (5.5)	(0.2)%	\$ 13.7	NM

NM = not meaningful

Other (income) expense, net was expense of \$8.2 million in fiscal 2023 compared to income of \$5.5 million in fiscal 2022. Foreign currency impact resulted in a loss of \$0.7 million in fiscal 2023 compared to a foreign currency gain of \$7.2 million in fiscal 2022. Included in the fiscal 2023 foreign currency impact is a loss of \$4.5 million relating to the remeasurement of monetary assets from the exit of our Russia operations. Additionally, we incurred \$1.4 million in costs to terminate our net investment hedges and \$0.6 million in transaction fees relating to the asset securitization agreement.

#### **Earnings Before Income Taxes**

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales	In Millions	As % Net Sales	In Millions	%
Earnings before income taxes	\$ 210.6	5.7 %	\$ 173.9	5.2 %	\$ 36.7	21.1 %

As a result of the factors discussed above, fiscal 2023 earnings before income taxes were \$210.6 million, an increase of \$36.7 million or 21.1% compared to fiscal 2022.

#### **Income Tax Expense**

	Fiscal 2023		Fiscal 2022		Increase (Decrease)	
	In Millions	As % Net Sales	In Millions	As % Net Sales	In Millions	%
Income tax expense	\$ 34.8	0.9 %	\$ 30.0	0.9 %	\$ 4.8	16.0 %
Effective tax rate	16.5 %		17.3 %		(0.8)%	

Our effective income tax rate with respect to any period may be volatile based on the mix of income in the tax jurisdictions in which we operate and the amount of our consolidated income before taxes.

The Company's income tax provision consists of federal, state and foreign income taxes. The effective income tax rate was 16.5% in fiscal 2023 compared to the fiscal 2022 effective income tax rate of 17.3%. The rate decrease in fiscal 2023 compared to fiscal 2022 is primarily due to the impact of the IRA and changes in the mix of earnings among tax jurisdictions.

The fiscal 2023 foreign effective income tax rate was 16.8% on foreign pre-tax income of \$171.9 million compared to an effective income tax rate of 11.0% on foreign pre-tax income of \$152.1 million in fiscal 2022. For both fiscal 2023 and fiscal

2022, the difference in the foreign effective tax rate versus the U.S. statutory rate of 21% is primarily attributable to lower tax rates in the foreign countries in which we operate. The rate increase in fiscal 2023 compared to fiscal 2022 is primarily due to a reduction in favorable permanent items and changes in mix of earnings among tax jurisdictions.

## Liquidity and Capital Resources

### Cash Flow and Financing Activities

Cash and cash equivalents at March 31, 2023, 2022 and 2021, were \$346.7 million, \$402.5 million and \$451.8 million, respectively.

Cash provided by operating activities for fiscal 2023 was \$279.9 million. Cash used by operating activities for 2022 was \$65.6 million and cash provided by operating activities in 2021 was \$358.4 million.

During fiscal 2023, accounts receivable decreased or provided cash of \$67.6 million due to sale of \$150.0 million accounts receivable under the RPA entered into December 21, 2022. Inventory increased or used cash of \$96.4 million. All components of inventory increased due to strategic investment, supply chain delays, new products and higher inventory costs from higher raw material costs, manufacturing, and to address the high backlog of customer orders. Accounts payable decreased or used cash of \$4.2 million due to timing of payments for strategic inventory. Net earnings were \$175.8 million, depreciation and amortization \$91.2 million, stock-based compensation, \$26.4 million, non-cash charges relating to exit charges of \$8.9 million, primarily relating to the Ooltewah and Sylmar plant closures, exiting our operations in Russia following the conflict in Ukraine, non-cash interest of \$2.0 million, and non-cash charges for impairment of indefinite-lived intangibles of \$0.5 million. Prepaid and other current assets provided funds of \$23.7 million, primarily from an increase of \$10.8 million of contract assets, as well as an increase of \$12.9 million in other prepaid expenses, such as taxes, insurance and other advances. Accrued expenses provided funds of \$5.7 million primarily from increases to contract liabilities of \$6.3 million, freight of \$2.4 million, warranties of \$2.2 million, and other miscellaneous accruals of \$5.2 million partially offset by decreases to tax related liabilities of \$7.8 million, including the decrease in income taxes payable of \$17.3 million related to the IRA production credits, and interest payments net of accruals of \$3.2 million.

During fiscal 2022, accounts receivable increased or used cash of \$129.0 million due to higher revenue during fiscal 2022, as compared to a COVID-19 restricted revenue in fiscal 2021. Inventory increased or used cash of \$212.8 million due to supply chain delays, new products and higher inventory costs from higher raw material costs, manufacturing and freight costs, strategic inventory builds to buffer against potential supply chain exposures and to address the high backlog of customer orders. Accounts payable increased or provided cash of \$65.3 million. Net earnings were \$143.9 million, depreciation and amortization \$95.9 million, stock-based compensation \$24.3 million, non-cash charges relating to exit charges of \$6.5 million, primarily relating to the Hagen, Germany plant closure and exiting our operations in Russia following the conflict in Ukraine, loss on valuation of the assets held for sale in India of \$3.0 million, allowance for doubtful debts of \$2.6 million, non-cash interest of \$2.1 million and non-cash charges for impairment of indefinite-lived intangibles of \$1.2 million. Prepaid and other current assets were a use of funds of \$32.0 million, primarily from an increase of \$13.6 million of contract assets, as well as an increase of \$12.3 million in other prepaid expenses, such as taxes, insurance and other advances. Accrued expenses were a use of funds of \$38.6 million primarily from Hagen severance payments of \$19.6 million, income tax payments of \$17.3 million net of tax provisions, payroll related payments of \$10.1 million, partially offset by customer advances of \$8.9 million.

During fiscal 2021, accounts receivable decreased or provided cash of \$8.7 million due to improved collections. Inventory decreased or provided cash of \$24.2 million due to improved inventory turns and accounts payable increased or provided cash of \$20.8 million due to our TPPL plant ramp-up. Net earnings were \$143.3 million, depreciation and amortization \$94.1 million, stock-based compensation \$19.8 million, non-cash charges relating to exit charges \$10.2 million, primarily relating to the Hagen, Germany plant closure, net gain from the disposal of assets of \$3.9 million (\$4.4 million from the insurance settlement relating to the Richmond fire claim), deferred tax benefit of \$9.0 million and non-cash interest of \$2.1 million. Prepaid and other current assets provided a source of funds of \$27.3 million, primarily from the receipt of \$29.1 million towards the insurance receivable relating to the Richmond plant claim in fiscal 2020 and the receipt of a working capital adjustment claim of \$2.0 million, relating to an acquisition made several years ago, partially offset by an increase of \$3.8 million in other prepaid expenses. Accrued expenses provided a source of funds of \$32.4 million primarily from payroll related accruals of \$27.8 million, taxes payable of \$4.5 million and selling and other expenses of \$3.3 million, partially offset by payments relating to warranty of \$5.8 million. Other liabilities decreased by \$12.7 million primarily relating to income taxes.

Cash used in investing activities for fiscal 2023, 2022 and 2021 was \$44.8 million, \$69.2 million and \$65.0 million, respectively.

During fiscal 2023, 2022, and fiscal 2021 we did not make any acquisitions.

Capital expenditures were \$88.8 million, \$74.0 million and \$70.0 million in fiscal 2023, 2022 and 2021, respectively.

In fiscal 2023, we received proceeds from termination of a net investment hedge of \$43.4 million, and we received \$3.3 million from the sale of two of our facilities in Europe during fiscal 2022.

Financing activities used cash of \$270.5 million in fiscal 2023. During fiscal 2023, we entered into the Third Amended Credit Facility providing additional borrowing through the Third Amended Term Loan. The proceeds of \$300.0 million from the new Third Amended Term Loan were used to repay our 2023 Senior notes for the same amount. Additionally, we borrowed \$310.5 million under the Second Amended Revolver and repaid \$500.5 million of the Second Amended Revolver and \$5.2 million of the Second Amended Term loan. Net repayments on short-term debt were \$21.7 million. Payment of cash dividends to our stockholders were \$28.5 million, treasury stock open market purchases were \$22.9 million, and payment of taxes related to net share settlement of equity awards were \$6.4 million. Proceeds from stock options were \$4.4 million, and payments for financing costs for debt modification were \$1.1 million.

During the second quarter of fiscal 2022, we entered into the Second Amended Credit Facility. As a result, financing activities provided cash of \$98.4 million in fiscal 2022. During fiscal 2022, we borrowed \$523.4 million under the Second Amended Revolver and repaid \$88.4 million of the Second Amended Revolver. Repayment on the Second Amended Term Loan was \$161.4 million and net borrowings on short-term debt were \$20.6 million. Treasury stock open market purchases were \$156.4 million, payment of cash dividends to our stockholders were \$29.4 million and payment of taxes related to net share settlement of equity awards were \$9.1 million. Debt issuance costs relating to the refinancing of the Second Amended Credit Facility was \$3.0 million. Proceeds from stock options were \$1.3 million.

During fiscal 2021, financing activities provided cash of \$188.7 million. We borrowed \$102.0 million under the Amended 2017 Revolver and repaid \$210.0 million of the Amended 2017 Revolver. Repayment on the Amended 2017 Term Loan was \$39.6 million and net payments on short-term debt were \$15.9 million. Proceeds from stock options during fiscal 2021 were \$9.1 million. Payment of cash dividends to our stockholders were \$29.8 million, payment of taxes related to net share settlement of equity awards were \$5.2 million.

Currency translation had a negative impact of \$20.5 million on our cash balance in the twelve months of fiscal 2023 compared to the negative impact of \$12.9 million in the twelve months of fiscal 2022. In the twelve months of fiscal 2023, principal currencies in which we do business such as the Euro, Polish zloty, and British pound generally weakened and Swiss franc strengthened versus the U.S. dollar.

As a result of the above, total cash and cash equivalents decreased by \$55.8 million from \$402.5 million at March 31, 2022 to \$346.7 million at March 31, 2023.

In addition to cash flows from operating activities, we had available committed and uncommitted credit lines of approximately \$693.4 million at March 31, 2023 to cover short-term liquidity requirements. Our Fourth Amended Credit Facility is committed through September 30, 2026, as long as we continue to comply with the covenants and conditions of the credit facility agreement.

## Compliance with Debt Covenants

All obligations under our Fourth Amended Credit Facility are secured by, among other things, substantially all of our U.S. assets. The Fourth Amended Credit Facility contains various covenants which, absent prepayment in full of the indebtedness and other obligations, or the receipt of waivers, limit our ability to conduct certain specified business transactions, buy or sell assets out of the ordinary course of business, engage in sale and leaseback transactions, pay dividends and take certain other actions. There are no prepayment penalties on loans under this credit facility.

We are in compliance with all covenants and conditions under our Fourth Amended Credit Facility and Senior Notes. We believe that we will continue to comply with these covenants and conditions, and that we have the financial resources and the capital available to fund the foreseeable organic growth in our business and to remain active in pursuing further acquisition opportunities. See Note 10 to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

## Off-Balance Sheet Arrangements

The Company did not have any off-balance sheet arrangements during any of the periods covered by this report.

## Contractual Obligations and Commercial Commitments

At March 31, 2023, we had certain cash obligations, which are due as follows:

	Total	Less than 1 year	2 to 3 years	4 to 5 years	After 5 years
	(in millions)				
Debt obligations	\$ 1,048.4	\$ 25.4	\$ 76.3	\$ 946.7	\$ —
Short-term debt	30.6	30.6	—	—	—
Interest on debt (1)	218.0	65.6	120.8	31.6	—
Operating leases	101.7	24.8	36.3	22.9	17.7
Tax Act - Transition Tax	46.3	11.6	34.7	—	—
Pension benefit payments and profit sharing	40.2	3.0	6.6	8.5	22.1
Purchase commitments	13.9	13.9	—	—	—
Total	\$ 1,499.1	\$ 174.9	\$ 274.7	\$ 1,009.7	\$ 39.8

(1) Interest payments for variable rate debt was calculated using the current applicable rate.

Due to the uncertainty of future cash outflows, uncertain tax positions have been excluded from the above table.

Under our Fourth Amended Credit Facility and other credit arrangements, we had outstanding standby letters of credit of \$3.6 million as of March 31, 2023.

## Credit Facilities and Leverage

During the second quarter of fiscal 2023, the Company entered into a third amendment to the 2017 Credit Facility (as amended, the “Third Amended Credit Facility”). The Third Amended Credit Facility provided new incremental delayed-draw senior secured term loan up to \$300 million (the “Third Amended Term Loan”), which was available to draw until March 15, 2023. During the fourth quarter, the Company drew \$300 million in the form of the Third Amended Term Loan. The funds will mature on September 30, 2026, the same as the Company’s Second Amended Term loan and Second Amended Revolver. In connection with the agreement, the Company incurred \$1.2 million in third party administrative and legal fees recognized in interest expense and capitalized \$1.1 million in charges from existing lenders as a deferred asset. Additionally, the Company derecognized the capitalized deferred asset and recognized the \$1.1 million as a deferred financing costs.

During the fourth quarter of fiscal 2023, the Company entered into a fourth amendment to the 2017 Credit Facility (as amended, the “Fourth Amended Credit Facility”). The Fourth Amended Credit Facility replaces the London Interbank Offered Rate (“LIBOR”) with the Secured Overnight Financing Rate (“SOFR”) in the calculation of interest for both the Second Amended Revolver and the Second Amended Term Loan.

During the second quarter of fiscal 2022, we entered into a second amendment to the Amended Credit Facility (as amended, the “Second Amended Credit Facility”). As a result, the Second Amended Credit Facility, now scheduled to mature on September 30, 2026, consists of a \$130.0 million senior secured term loan (the “Second Amended Term Loan”), a CAD 106.4 million (\$84.2 million) term loan and an \$850.0 million senior secured revolving credit facility (the “Second Amended Revolver”). This amendment resulted in a decrease of the Amended Term Loan by \$150.0 million and an increase of the Amended Revolver by \$150.0 million.

Shown below are the leverage ratios at March 31, 2023 and 2022, in connection with the Fourth Amended Credit Facility.

The total net debt, as defined under the Fourth Amended Credit Facility is \$736.0 million for fiscal 2023 and is 1.8 times adjusted EBITDA (non-GAAP), compared to total net debt of \$905.9 million and 2.5 times adjusted EBITDA (non-GAAP) for fiscal 2022.

The following table provides a reconciliation of net earnings to EBITDA (non-GAAP) and adjusted EBITDA (non-GAAP) for March 31, 2023 and 2022, in connection with the Second Amended Credit Facility:

	Fiscal 2023 (in millions, except ratios)	Fiscal 2022 (in millions, except ratios)
Net earnings as reported	\$ 175.8	\$ 143.9
Add back:		
Depreciation and amortization	91.2	95.9
Interest expense	59.5	37.8
Income tax expense	34.8	30.0
EBITDA (non GAAP) <sup>(1)</sup>	\$ 361.3	\$ 307.6
Adjustments per credit agreement definitions <sup>(2)</sup>	51.7	51.5
Adjusted EBITDA (non-GAAP) per credit agreement <sup>(1)</sup>	<u>\$ 413.0</u>	<u>\$ 359.1</u>
Total net debt <sup>(3)</sup>	<u>\$ 736.0</u>	<u>\$ 905.9</u>
Leverage ratios <sup>(4)</sup> :		
Total net debt/adjusted EBITDA ratio	1.8 X	2.5 X
Maximum ratio permitted	4.25 X	3.5 X
Consolidated interest coverage ratio <sup>(5)</sup>	7.3 X	10.0 X
Minimum ratio required	3.0 X	3.0 X

- (1) We have included EBITDA (non-GAAP) and adjusted EBITDA (non-GAAP) because our lenders use them as key measures of our performance. EBITDA is defined as earnings before interest expense, income tax expense, depreciation and amortization. EBITDA is not a measure of financial performance under GAAP and should not be considered an alternative to net earnings or any other measure of performance under GAAP or to cash flows from operating, investing or financing activities as an indicator of cash flows or as a measure of liquidity. Our calculation of EBITDA may be different from the calculations used by other companies, and therefore comparability may be limited. Certain financial covenants in our Fourth Amended Credit Facility are based on EBITDA, subject to adjustments, which are shown above. Continued availability of credit under our Fourth Amended Credit Facility is critical to our ability to meet our business plans. We believe that an understanding of the key terms of our credit agreement is important to an investor’s understanding of our financial condition and liquidity risks. Failure to comply with our financial covenants, unless waived by our lenders, would mean we could not borrow any further amounts under our revolving credit facility and would give our lenders the right to demand immediate repayment of all outstanding revolving credit and term loans. We would be unable to continue our operations at current levels if we lost the liquidity provided under our credit agreements. Depreciation and amortization in this table excludes the amortization of deferred financing fees, which is included in interest expense.
- (2) The \$51.7 million adjustment to EBITDA in fiscal 2023 primarily related to \$26.4 million of non-cash stock compensation, \$22.4 million of restructuring and other exit charges, impairment of indefinite-lived intangibles of \$0.5 million, and \$1.4 million for swap termination fees. The \$51.5 million adjustment to EBITDA in fiscal 2022 primarily related to \$24.3 million of non-cash stock compensation, \$26.0 million of restructuring and other exit charges, indefinite-lived intangibles of \$1.2 million.
- (3) Debt includes finance lease obligations and letters of credit and is net of all U.S. cash and cash equivalents and foreign cash and investments, as defined in the Fourth Amended Credit Facility. In fiscal 2023, the amounts deducted in the

calculation of net debt were U.S. cash and cash equivalents and foreign cash investments of \$346.7 million, and in fiscal 2022, were \$402.5 million.

- (4) These ratios are included to show compliance with the leverage ratios set forth in our credit facilities. We show both our current ratios and the maximum ratio permitted or minimum ratio required under our Fourth Amended Credit Facility, for fiscal 2023 and fiscal 2022, respectively.
- (5) As defined in the Second Amended Credit Facility, interest expense used in the consolidated interest coverage ratio excludes non-cash interest of \$3.1 million and \$2.1 million for fiscal 2023 and fiscal 2022, respectively.

#### **RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS**

See Note 1 to the Consolidated Financial Statements - Summary of Significant Accounting Policies for a description of certain recently issued accounting standards that were adopted or are pending adoption that could have a significant impact on our Consolidated Financial Statements or the Notes to the Consolidated Financial Statements.

#### **Related Party Transactions**

None.

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

##### *Market Risks*

Our cash flows and earnings are subject to fluctuations resulting from changes in raw material costs, foreign currency exchange rates and interest rates. We manage our exposure to these market risks through internally established policies and procedures and, when deemed appropriate, through the use of derivative financial instruments. Our policy does not allow speculation in derivative instruments for profit or execution of derivative instrument contracts for which there are no underlying exposures. We do not use financial instruments for trading purposes and are not a party to any leveraged derivatives. We monitor our underlying market risk exposures on an ongoing basis and believe that we can modify or adapt our hedging strategies as needed.

##### *Counterparty Risks*

We have entered into lead forward purchase contracts, foreign exchange forward and purchased option contracts and cross currency fixed interest rate swaps to manage the risk associated with our exposures to fluctuations resulting from changes in raw material costs, foreign currency exchange rates and interest rates. The Company's agreements are with creditworthy financial institutions. Those contracts that result in a liability position at March 31, 2023 are \$18.9 million (pre-tax). Those contracts that result in an asset position at March 31, 2023 are \$2.9 million (pre-tax). The impact on the Company due to nonperformance by the counterparties has been evaluated and not deemed material.

We hedge our net investments in foreign operations against future volatility in the exchange rates between the U.S. dollar and Euro. On September 29, 2022, we terminated our cross-currency fixed interest rate swap contracts with an aggregate notional amount of \$300 million and executed cross-currency fixed interest rate swap contracts with an aggregate notional amount of \$150 million, maturing on December 15, 2027. Depending on the movement in the exchange rates between the U.S. dollar and Euro at maturity, the Company may owe the counterparties an amount that is different from the notional amount of \$150 million.

Excluding the cross currency fixed interest rate swap agreements, the vast majority of these contracts will settle within one year.

##### *Interest Rate Risks*

We are exposed to changes in variable U.S. interest rates on borrowings under our credit agreements, as well as short term borrowings in the U.S. and our foreign subsidiaries. On a selective basis, from time to time, we enter into interest rate swap agreements to reduce the negative impact that increases in interest rates could have on our outstanding variable rate debt. Management considers the interest rate swaps to be highly effective against changes in the cash flows from our underlying variable rate debt based on the criteria in the FASB guidance. Cash flows related to the interest rate swap agreements are included in interest expense over the terms of the agreements. At March 31, 2023 such agreements effectively convert \$200 million of our variable-rate debt to a fixed-rate basis, utilizing the one-month Term SOFR as a floating rate reference.

Fluctuations in SOFR and fixed rates affect both our net financial investment position and the amount of cash to be paid or received by us under these agreements.

A 100 basis point increase in interest rates would have increased annual interest expense by approximately \$5.8 million on the variable rate portions of our debt.

#### *Commodity Cost Risks—Lead Contracts*

We have a significant risk in our exposure to certain raw materials. Our largest single raw material cost is for lead, for which the cost remains volatile. In order to hedge against increases in our lead cost, we have entered into forward contracts with financial institutions to fix the price of lead. A vast majority of such contracts are for a period not extending beyond one year. We had the following contracts outstanding at the dates shown below:

Date	\$'s Under Contract (in millions)	# Pounds Purchased (in millions)	Average Cost/Pound	Approximate % of Lead Requirements <sup>(1)</sup>
March 31, 2023	\$47.9	50.0	\$0.96	8%
March 31, 2022	56.8	54.0	1.05	8
March 31, 2021	50.6	54.5	0.93	10

(1) Based on the fiscal year lead requirements for the periods then ended.

We estimate that a 10% increase in our cost of lead would have increased our cost of goods sold by approximately \$81 million for the fiscal year ended March 31, 2023.

#### *Foreign Currency Exchange Rate Risks*

We manufacture and assemble our products globally in the Americas, EMEA and Asia. Approximately 40% of our sales and related expenses are transacted in foreign currencies. Our sales revenue, production costs, profit margins and competitive position are affected by the strength of the currencies in countries where we manufacture or purchase goods relative to the strength of the currencies in countries where our products are sold. Additionally, as we report our financial statements in U.S. dollars, our financial results are affected by the strength of the currencies in countries where we have operations relative to the strength of the U.S. dollar. The principal foreign currencies in which we conduct business are the Euro, Swiss franc, British pound, Polish zloty, Chinese renminbi, Canadian dollar, Brazilian Real and Mexican peso.

We quantify and monitor our global foreign currency exposures. Our largest foreign currency exposure is from the purchase and conversion of U.S. dollar based lead costs into local currencies in Europe. Additionally, we have currency exposures from intercompany financing and intercompany and third party trade transactions. On a selective basis, we enter into foreign currency forward contracts and purchase option contracts to reduce the impact from the volatility of currency movements; however, we cannot be certain that foreign currency fluctuations will not impact our operations in the future.

We hedge approximately 10% - 15% of the nominal amount of our known foreign exchange transactional exposures. We primarily enter into foreign currency exchange contracts to reduce the earnings and cash flow impact of the variation of non-functional currency denominated receivables and payables. The vast majority of such contracts are for a period not extending beyond one year.

Gains and losses resulting from hedging instruments offset the foreign exchange gains or losses on the underlying assets and liabilities being hedged. The maturities of the forward exchange contracts generally coincide with the settlement dates of the related transactions. Realized and unrealized gains and losses on these contracts are recognized in the same period as gains and losses on the hedged items. We also selectively hedge anticipated transactions that are subject to foreign exchange exposure, primarily with foreign currency exchange contracts, which are designated as cash flow hedges in accordance with Topic 815 - Derivatives and Hedging. During the third quarter of fiscal 2022, we also entered into cross currency fixed interest rate swap agreements, to hedge our net investments in foreign operations against future volatility in the exchange rates between U.S. Dollars and Euros.

At March 31, 2023 and 2022, we estimate that an unfavorable 10% movement in the exchange rates would have adversely changed our hedge valuations by approximately \$32.7 million and \$36.6 million, respectively.

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

EnerSys

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

	<b>Page</b>
<a href="#">Report of Independent Registered Public Accounting Firm (on Consolidated Financial Statements) (PCAOB ID: 42)</a>	52
<a href="#">Report of Independent Registered Public Accounting Firm (on Internal Control Over Financial Reporting)</a>	54
Audited Consolidated Financial Statements	
<a href="#">Consolidated Balance Sheets as of March 31, 2023 and 2022</a>	55
<a href="#">Consolidated Statements of Income for the Fiscal Years Ended March 31, 2023, 2022 and 2021</a>	56
<a href="#">Consolidated Statements of Comprehensive Income for the Fiscal Years Ended March 31, 2023, 2022 and 2021</a>	57
<a href="#">Consolidated Statements of Changes in Equity for the Fiscal Years Ended March 31, 2023, 2022 and 2021</a>	58
<a href="#">Consolidated Statements of Cash Flows for the Fiscal Years Ended March 31, 2023, 2022 and 2021</a>	59
Notes to Consolidated Financial Statements	60
<a href="#">1. Summary of Significant Accounting Policies</a>	60
<a href="#">2. Revenue Recognition</a>	67
<a href="#">3. Leases</a>	67
<a href="#">4. Accounts Receivable</a>	70
<a href="#">5. Inventories</a>	70
<a href="#">6. Property, Plant, and Equipment</a>	71
<a href="#">7. Goodwill and Other Intangible Assets</a>	71
<a href="#">8. Prepaid and Other Current Assets</a>	72
<a href="#">9. Accrued Expenses</a>	72
<a href="#">10. Debt</a>	73
<a href="#">11. Other Liabilities</a>	76
<a href="#">12. Fair Value Measurements</a>	76
<a href="#">13. Derivative Financial Instruments</a>	78
<a href="#">14. Income Taxes</a>	82
<a href="#">15. Retirement Plans</a>	85
<a href="#">16. Stockholders' Equity</a>	90
<a href="#">17. Stock-Based Compensation</a>	92
<a href="#">18. Earnings Per Share</a>	95
<a href="#">19. Commitments, Contingencies and Litigation</a>	95
<a href="#">20. Restructuring, Exit and Other Charges</a>	96
<a href="#">21. Warranty</a>	99
<a href="#">22. Other (Income) Expense, Net</a>	100
<a href="#">23. Business Segments</a>	100
<a href="#">24. Subsequent Events</a>	102

## **Report of Independent Registered Public Accounting Firm**

To the Stockholders and the Board of Directors of EnerSys

### **Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of EnerSys (the Company) as of March 31, 2023 and 2022, the related consolidated statements of income, comprehensive income, changes in equity, and cash flows for each of the three years in the period ended March 31, 2023, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at March 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended March 31, 2023, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of March 31, 2023, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated May 24, 2023, expressed an unqualified opinion thereon.

### **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 U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the 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 Matters**

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate 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 consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### ***Valuation of Goodwill and Indefinite-Lived Intangible Assets***

*Description of the Matter* As reflected in the Company's consolidated financial statements, the Company's goodwill balance was \$676.7 million as of March 31, 2023. In addition, the Company's indefinite-lived intangible assets were \$143.7 million as of March 31, 2023. As discussed in Note 1 to the consolidated financial statements, goodwill and indefinite-lived intangible assets are tested for impairment at least annually.

Auditing management's annual quantitative goodwill and indefinite-lived intangible assets impairment tests was complex and involved a high degree of subjectivity for certain reporting units and certain indefinite-lived intangible assets due to the significant estimation required in determining the fair value of the reporting units and the indefinite-lived intangible assets. The fair value estimates related to these reporting units and indefinite-lived intangible assets were sensitive to significant assumptions such as discount rates, revenue growth rates, operating margins, working capital rates, royalty rates, and terminal growth rates, which are forward-looking and could be affected by future economic and market conditions.

*How We Addressed  
the Matter in Our  
Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's annual quantitative goodwill and indefinite-lived intangible asset impairment tests. For example, we tested controls over management's review of the valuation models, the significant assumptions used to develop the estimate including forecasted revenue growth rates and profitability, and the completeness and accuracy of the data used in the valuations.

To test the estimated fair value of the Company's reporting units and indefinite-lived intangible assets, we performed audit procedures that included, among other procedures, assessing fair value methodologies and testing the significant assumptions discussed above and the completeness and accuracy of the underlying data used by the Company in its analyses. For example, we compared the significant assumptions used by management to current industry, market and economic trends, to historical results of the Company's business and other guideline companies within the same industry and to other relevant factors. We assessed the historical accuracy of management's estimates and performed sensitivity analyses of significant assumptions to evaluate the changes in the fair value of the reporting units and indefinite-lived intangible assets that would result from changes in the assumptions. We also involved internal valuation specialists to assist in our evaluation of the significant assumptions and methodologies used by the Company. In addition, we tested management's reconciliation of the fair value of the reporting units to the market capitalization of the Company.

***Income Taxes - Uncertain Tax Positions***

*Description of the  
Matter*

As discussed in Note 14 to the Company's consolidated financial statements, the Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction, and various states and foreign jurisdictions. Also as disclosed in Note 14, approximately 82% of the Company's consolidated earnings before taxes are generated in foreign jurisdictions. Uncertainty in a tax position taken or to be taken on a tax return may arise as tax laws are subject to interpretation. The Company must identify its uncertain tax positions and uses significant judgment in (1) determining whether a tax position's technical merits are more-likely-than-not to be sustained and (2) measuring the amount of tax benefit that qualifies for recognition. As of March 31, 2023, the Company has recognized accrued liabilities of \$3.5 million for uncertain tax positions.

Auditing the completeness of the Company's uncertain tax positions and the evaluation of the technical merits of those uncertain tax positions is complex given the scope of its international operations and the significant judgment required in evaluating the technical merits of the Company's uncertain tax positions.

*How We Addressed  
the Matter in Our  
Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of the Company's controls over identifying uncertain tax positions and evaluating the technical merits of those positions. For example, we tested controls over the review of the Company's foreign operations, including the tax positions taken by those operations, differences between statutory and effective tax rates, permanent differences impacting taxable income, and the monitoring of tax audits.

We involved our tax professionals with subject matter expertise in the areas of international taxation and transfer pricing to assess the technical merits of the Company's tax positions. This included assessing the Company's correspondence with the relevant tax authorities and evaluating income tax opinions or other third-party advice obtained by the Company. We also used our knowledge of, and experience with, the application of international and local income tax laws by the relevant income tax authorities to evaluate the Company's accounting for those tax positions. We analyzed the Company's assumptions and data used to determine the amount of tax benefit to recognize and tested the accuracy of the calculations. We also evaluated the Company's income tax disclosures included in Note 14 to the consolidated financial statements in relation to these matters.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 1998.

Philadelphia, Pennsylvania  
May 24, 2023

## **Report of Independent Registered Public Accounting Firm**

To the Stockholders and the Board of Directors of EnerSys

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

We have audited EnerSys' internal control over financial reporting as of March 31, 2023, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, EnerSys (the Company) maintained, in all material respects, effective internal control over financial reporting as of March 31, 2023, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the 2023 consolidated financial statements of the Company and our report dated May 24, 2023 expressed an unqualified opinion thereon.

### **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 Annual 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/ Ernst & Young LLP

Philadelphia, Pennsylvania  
May 24, 2023

**EnerSys**  
**Consolidated Balance Sheets**  
**(In Thousands, Except Share and Per Share Data)**

	March 31,	
	2023	2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 346,665	\$ 402,488
Accounts receivable, net of allowance for doubtful accounts (2023-\$8,775; 2022-\$12,219)	637,817	719,434
Inventories, net	797,798	715,712
Prepaid and other current assets	113,601	155,559
Total current assets	1,895,881	1,993,193
Property, plant, and equipment, net	513,283	503,264
Goodwill	676,715	700,640
Other intangible assets, net	360,412	396,202
Deferred taxes	49,152	60,479
Other assets	121,231	82,868
<b>Total assets</b>	<b>\$ 3,616,674</b>	<b>\$ 3,736,646</b>
<b>Liabilities and Equity</b>		
Current liabilities:		
Short-term debt	\$ 30,642	\$ 55,084
Current portion of finance leases	90	185
Accounts payable	378,641	393,096
Accrued expenses	308,947	289,765
Total current liabilities	718,320	738,130
Long-term debt, net of unamortized debt issuance costs	1,041,989	1,243,002
Finance leases	254	231
Deferred taxes	61,118	78,228
Other liabilities	191,112	183,780
<b>Total liabilities</b>	<b>2,012,793</b>	<b>2,243,371</b>
Commitments and contingencies		
Equity:		
Preferred Stock, \$0.01 par value, 1,000,000 shares authorized, no shares issued or outstanding at March 31, 2023 and at March 31, 2022	—	—
Common Stock, \$0.01 par value per share, 135,000,000 shares authorized, 56,004,613 shares issued and 40,901,059 shares outstanding at March 31, 2023; 55,748,924 shares issued and 40,986,658 shares outstanding at March 31, 2022	560	557
Additional paid-in capital	596,464	571,464
Treasury stock at cost, 15,103,554 shares held as of March 31, 2023 and 14,762,266 shares held as of March 31, 2022	(740,956)	(719,119)
Retained earnings	1,930,148	1,783,586
Contra equity - indemnification receivable	(2,463)	(3,620)
Accumulated other comprehensive loss	(183,474)	(143,495)
<b>Total EnerSys stockholders' equity</b>	<b>1,600,279</b>	<b>1,489,373</b>
Nonredeemable noncontrolling interests	3,602	3,902
<b>Total equity</b>	<b>1,603,881</b>	<b>1,493,275</b>
<b>Total liabilities and equity</b>	<b>\$ 3,616,674</b>	<b>\$ 3,736,646</b>

See accompanying notes.

**EnerSys**  
**Consolidated Statements of Income**  
(In Thousands, Except Share and Per Share Data)

	Fiscal year ended March 31,		
	2023	2022	2021
Sales from products	\$ 3,307,781	\$ 3,004,231	\$ 2,681,719
Sales from services	400,798	353,088	296,213
Net sales	3,708,579	3,357,319	2,977,932
Cost of goods sold	2,597,296	2,360,150	2,033,636
Cost of services	270,464	244,597	205,146
Inventory step up to fair value relating to acquisitions and exit activities	681	2,604	—
Gross profit	840,138	749,968	739,150
Operating expenses	544,858	520,810	482,401
Restructuring and other exit charges	16,439	18,756	40,374
Impairment of indefinite-lived intangibles	480	1,178	—
Loss on assets held for sale	—	2,973	—
Operating earnings	278,361	206,251	216,375
Interest expense	59,529	37,777	38,436
Other (income) expense, net	8,193	(5,465)	7,804
Earnings before income taxes	210,639	173,939	170,135
Income tax expense	34,829	30,028	26,761
Net earnings attributable to EnerSys stockholders	<u>\$ 175,810</u>	<u>\$ 143,911</u>	<u>\$ 143,374</u>
Net earnings per common share attributable to EnerSys stockholders:			
Basic	<u>\$ 4.31</u>	<u>\$ 3.42</u>	<u>\$ 3.37</u>
Diluted	<u>\$ 4.25</u>	<u>\$ 3.36</u>	<u>\$ 3.32</u>
Dividends per common share	<u>\$ 0.70</u>	<u>\$ 0.70</u>	<u>\$ 0.70</u>
Weighted-average number of common shares outstanding:			
Basic	<u>40,809,235</u>	<u>42,106,337</u>	<u>42,548,449</u>
Diluted	<u>41,326,755</u>	<u>42,783,373</u>	<u>43,224,403</u>

See accompanying notes.

**EnerSys**  
**Consolidated Statements of Comprehensive Income**  
**(In Thousands)**

	Fiscal year ended March 31,		
	2023	2022	2021
Net earnings	\$ 175,810	\$ 143,911	\$ 143,374
Other comprehensive (loss) income:			
Net unrealized gain (loss) on derivative instruments, net of tax	(1,552)	2,603	6,283
Pension funded status adjustment, net of tax	8,214	8,310	1,847
Foreign currency translation adjustment	(46,941)	(38,397)	91,277
Total other comprehensive (loss) gain, net of tax	(40,279)	(27,484)	99,407
Total comprehensive income	135,531	116,427	242,781
Comprehensive gain (loss) attributable to noncontrolling interests	(300)	128	284
Comprehensive income attributable to EnerSys stockholders	<u>\$ 135,831</u>	<u>\$ 116,299</u>	<u>\$ 242,497</u>

See accompanying notes.

**EnerSys**  
Consolidated Statements of Changes in Equity

(In Thousands, Except Per Share Data)	Preferred Stock	Common Stock	Additional Paid-in Capital	Treasury Stock	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Contra-Equity	Total EnerSys Stockholders' Equity	Non-redeemable Non-Controlling Interests	Total Equity
<b>Balance at March 31, 2020</b>	\$ —	\$ 551	\$ 529,100	\$ (564,376)	\$ 1,556,980	\$ (215,006)	\$ (6,724)	\$ 1,300,525	\$ 3,537	\$ 1,304,062
Stock-based compensation	—	—	19,817	—	—	—	—	19,817	—	19,817
Exercise of stock options	—	4	9,110	—	—	—	—	9,114	—	9,114
Shares issued under equity awards (taxes paid related to net share settlement of equity awards), net	—	—	(5,153)	—	—	—	—	(5,153)	—	(5,153)
Reissuance of treasury stock towards employee stock purchase plan	—	—	(49)	895	—	—	—	846	—	846
Contra equity - adjustment to indemnification receivable for acquisition related tax liability	—	—	—	—	—	—	1,369	1,369	—	1,369
Other	—	—	571	—	—	—	—	571	—	571
Net earnings	—	—	—	—	143,374	—	—	143,374	—	143,374
Dividends (\$0.70 per common share)	—	—	772	—	(30,603)	—	—	(29,831)	—	(29,831)
Other comprehensive income:										
Pension funded status adjustment (net of tax benefit of \$424)	—	—	—	—	—	1,847	—	1,847	—	1,847
Net unrealized gain (loss) on derivative instruments (net of tax expense of \$1,952)	—	—	—	—	—	6,283	—	6,283	—	6,283
Foreign currency translation adjustment	—	—	—	—	—	90,993	—	90,993	284	91,277
<b>Balance at March 31, 2021</b>	\$ —	\$ 555	\$ 554,168	\$ (563,481)	\$ 1,669,751	\$ (115,883)	\$ (5,355)	\$ 1,539,755	\$ 3,821	\$ 1,543,576
Stock-based compensation	—	—	24,289	—	—	—	—	24,289	—	24,289
Exercise of stock options	—	2	1,334	—	—	—	—	1,336	—	1,336
Shares issued under equity awards (taxes paid related to net share settlement of equity awards), net	—	—	(9,150)	—	—	—	—	(9,150)	—	(9,150)
Purchase of common stock	—	—	—	(156,366)	—	—	—	(156,366)	—	(156,366)
Contra equity - adjustment to indemnification receivable for acquisition related tax liability	—	—	—	—	—	—	1,735	1,735	—	1,735
Other	—	—	100	728	—	—	—	828	—	828
Net earnings	—	—	—	—	143,911	—	—	143,911	—	143,911
Dividends (\$0.70 per common share)	—	—	723	—	(30,076)	—	—	(29,353)	—	(29,353)
Dissolution of joint venture	—	—	—	—	—	—	—	—	(47)	(47)
Other comprehensive income:										
Pension funded status adjustment (net of tax benefit of \$1,910)	—	—	—	—	—	8,310	—	8,310	—	8,310
Net unrealized gain (loss) on derivative instruments (net of tax expense of \$789)	—	—	—	—	—	2,603	—	2,603	—	2,603
Foreign currency translation adjustment	—	—	—	—	—	(38,525)	—	(38,525)	128	(38,397)
<b>Balance at March 31, 2022</b>	\$ —	\$ 557	\$ 571,464	\$ (719,119)	\$ 1,783,586	\$ (143,495)	\$ (3,620)	\$ 1,489,373	\$ 3,902	\$ 1,493,275
Stock-based compensation	—	—	26,371	—	—	—	—	26,371	—	26,371
Exercise of stock options	—	3	4,390	—	—	—	—	4,393	—	4,393
Shares issued under equity awards (taxes paid related to net share settlement of equity awards), net	—	—	(6,453)	—	—	—	—	(6,453)	—	(6,453)
Purchase of common stock	—	—	—	(22,907)	—	—	—	(22,907)	—	(22,907)
Contra equity - adjustment to indemnification receivable for acquisition related tax liability	—	—	—	—	—	—	1,157	1,157	—	1,157
Other	—	—	(19)	1,070	—	—	—	1,051	—	1,051
Net earnings	—	—	—	—	175,810	—	—	175,810	—	175,810
Dividends (\$0.70 per common share)	—	—	711	—	(29,248)	—	—	(28,537)	—	(28,537)
Other comprehensive income:										
Pension funded status adjustment (net of tax expense of \$2,947)	—	—	—	—	—	8,214	—	8,214	—	8,214
Net unrealized gain (loss) on derivative instruments (net of tax benefit of \$469)	—	—	—	—	—	(1,552)	—	(1,552)	—	(1,552)
Foreign currency translation adjustment	—	—	—	—	—	(46,641)	—	(46,641)	(300)	(46,941)
<b>Balance at March 31, 2023</b>	\$ —	\$ 560	\$ 596,464	\$ (740,956)	\$ 1,930,148	\$ (183,474)	\$ (2,463)	\$ 1,600,279	\$ 3,602	\$ 1,603,881

See accompanying notes.

**EnerSys**  
**Consolidated Statements of Cash Flows**  
**(In Thousands)**

	Fiscal year ended March 31,		
	2023	2022	2021
<b>Cash flows from operating activities</b>			
Net earnings	\$ 175,810	\$ 143,911	\$ 143,374
Adjustments to reconcile net earnings to net cash provided by operating activities:			
Depreciation and amortization	91,153	95,878	94,082
Write-off of assets relating to restructuring and other exit charges	8,920	6,503	10,231
Loss on assets held for sale	—	2,973	—
Impairment of indefinite-lived intangibles	480	1,178	—
Derivatives not designated in hedging relationships:			
Net losses (gains)	(1,182)	157	(430)
Cash proceeds (settlements)	470	255	905
Provision for doubtful accounts	(431)	2,621	178
Deferred income taxes	(15,236)	1,115	(8,994)
Non-cash interest expense	1,964	2,107	2,072
Stock-based compensation	26,371	24,289	19,817
Gain on disposal of property, plant, and equipment	(113)	(490)	(3,883)
Changes in assets and liabilities, net of effects of acquisitions:			
Accounts receivable	67,553	(128,956)	8,713
Inventories	(96,413)	(212,839)	24,176
Prepaid and other current assets	23,689	(32,044)	27,292
Other assets	(6,298)	270	424
Accounts payable	(4,236)	65,316	20,797
Accrued expenses	5,747	(38,578)	32,357
Other liabilities	1,690	749	(12,736)
Net cash provided by (used in) operating activities	<u>279,938</u>	<u>(65,585)</u>	<u>358,375</u>
<b>Cash flows from investing activities</b>			
Capital expenditures	(88,772)	(74,041)	(70,020)
Proceeds from disposal of facility	—	3,268	—
Insurance proceeds relating to property, plant and equipment	—	—	4,800
Proceeds from disposal of property, plant, and equipment	586	1,540	176
Proceeds from termination of net investment hedges	<u>43,384</u>	<u>—</u>	<u>—</u>
Net cash used in investing activities	<u>(44,802)</u>	<u>(69,233)</u>	<u>(65,044)</u>
<b>Cash flows from financing activities</b>			
Net borrowings (repayments) on short-term debt	(21,719)	20,556	(15,934)
Proceeds from Second Amended 2017 Revolver borrowings	310,500	523,400	102,000
Repayments of Second Amended 2017 Revolver borrowings	(500,500)	(88,400)	(210,000)
Proceeds from Amended 2017 Term Loan	300,000	—	—
Repayments of 2023 Senior Notes	(300,000)	—	—
Repayments of Second Amended 2017 Term Loan	(5,215)	(161,447)	(39,589)
Debt issuance costs	(1,121)	(2,952)	—
Finance lease obligations and other	1,110	810	650
Option proceeds, net	4,392	1,336	9,114
Payment of taxes related to net share settlement of equity awards	(6,453)	(9,150)	(5,153)
Purchase of treasury stock	(22,907)	(156,366)	—
Dividends paid to stockholders	(28,537)	(29,353)	(29,812)
Net cash (used in) provided by financing activities	<u>(270,450)</u>	<u>98,434</u>	<u>(188,724)</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(20,509)</u>	<u>(12,936)</u>	<u>20,222</u>
Net (decrease) increase in cash and cash equivalents	<u>(55,823)</u>	<u>(49,320)</u>	<u>124,829</u>
Cash and cash equivalents at beginning of year	<u>402,488</u>	<u>451,808</u>	<u>326,979</u>
Cash and cash equivalents at end of year	<u>\$ 346,665</u>	<u>\$ 402,488</u>	<u>\$ 451,808</u>

See accompanying notes.

**Notes to Consolidated Financial Statements**  
**March 31, 2023**  
**(In Thousands, Except Share and Per Share Data)**

## **1. Summary of Significant Accounting Policies**

### ***Description of Business***

EnerSys (the “Company”) and its predecessor companies have been manufacturers of industrial batteries for over 125 years. EnerSys is a global leader in stored energy solutions for industrial applications. The Company manufactures, markets and distributes industrial batteries and related products such as chargers, outdoor cabinet enclosures, power equipment and battery accessories, and provides related after-market and customer-support services for its products. With the Alpha acquisition, the Company is also a provider of highly integrated power solutions and services to broadband, telecom, renewable and industrial customers.

### ***Principles of Consolidation***

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries and any partially owned subsidiaries that the Company has the ability to control. Control generally equates to ownership percentage, whereby investments that are more than 50% owned are generally consolidated, investments in affiliates of 50% or less but greater than 20% are generally accounted for using the equity method, and investments in affiliates of 20% or less are accounted for using the cost method. All intercompany transactions and balances have been eliminated in consolidation.

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

Results of foreign operations of subsidiaries, whose functional currency is the local currency, are translated into U.S. dollars using average exchange rates during the periods. The assets and liabilities are translated into U.S. dollars using exchange rates as of the balance sheet dates. Gains or losses resulting from translating the foreign currency financial statements are accumulated as a separate component of accumulated other comprehensive income (“AOCI”) in EnerSys’ stockholders’ equity and noncontrolling interests.

Transaction gains and losses resulting from exchange rate changes on transactions denominated in currencies other than the functional currency of the applicable subsidiary are included in the Consolidated Statements of Income, within “Other (income) expense, net”, in the year in which the change occurs.

### ***Revenue Recognition***

The Company recognizes revenue when (or as) performance obligations are satisfied by transferring control of the performance obligation to a customer. Control of a performance obligation may transfer to the customer either at a point in time or over time depending on an evaluation of the specific facts and circumstances for each contract, including the terms and conditions of the contract as agreed with the customer, as well as the nature of the products or services to be provided.

The Company's primary performance obligation to its customers is the delivery of finished goods and products, pursuant to purchase orders. Control of the products sold typically transfers to its customers at the point in time when the goods are shipped as this is also when title generally passes to its customers under the terms and conditions of the customer arrangements.

Each customer purchase order sets forth the transaction price for the products and services purchased under that arrangement. Some customer arrangements include variable consideration, such as volume rebates, some of which depend upon the customers meeting specified performance criteria, such as a purchasing level over a period of time. The Company uses judgment to estimate the most likely amount of variable consideration at each reporting date. When estimating variable consideration, the Company also applies judgment when considering the probability of whether a reversal of revenue could occur and only recognize revenue subject to this constraint.

Service revenues related to the work performed for the Company’s customers by its maintenance technicians generally represent a separate and distinct performance obligation. Control for these services passes to the customer as the services are performed.

The Company's typical payment terms are 30 days and sales arrangements do not contain any significant financing component for its customers.

The Company uses historic customer product return data as a basis of estimation for customer returns and records the reduction of sales at the time revenue is recognized.

Freight charges billed to customers are included in sales and the related shipping costs are included in cost of sales in the Consolidated Statements of Income. If shipping activities are performed after a customer obtains control of a product, the Company applies a policy election to account for shipping as an activity to fulfill the promise to transfer the product to the customer.

The Company applies a policy election to exclude transaction taxes collected from customers from sales when the tax is both imposed on and concurrent with a specific revenue-producing transaction.

The Company generally provides customers with a product warranty that provides assurance that the products meet standard specifications and are free of defects. The Company maintains a reserve for claims incurred under standard product warranty programs. Performance obligations related to service warranties are not material to the Consolidated Financial Statements.

The Company pays sales commissions to its sales representatives, which may be considered as incremental costs to obtain a contract. However, since the recoverability period is less than one year, the Company has utilized the practical expedient to record these costs of obtaining a contract as an expense as they are incurred.

#### ***Warranties***

The Company's products are warranted for a period ranging from one to twenty years for Energy Systems batteries, from one to five years for Motive Power batteries and for a period ranging from one to four years for Specialty transportation batteries. The Company provides for estimated product warranty expenses when the related products are sold. The assessment of the adequacy of the reserve includes a review of open claims and historical experience.

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

Cash and cash equivalents include all highly liquid investments with an original maturity of three months or less when purchased.

#### ***Concentration of Credit Risk***

Financial instruments that subject the Company to potential concentration of credit risk consist principally of short-term cash investments and trade accounts receivable. The Company invests its cash with various financial institutions and in various investment instruments limiting the amount of credit exposure to any one financial institution or entity. The Company has bank deposits that exceed federally insured limits. In addition, certain cash investments may be made in U.S. and foreign government bonds, or other highly rated investments guaranteed by the U.S. or foreign governments. Concentration of credit risk with respect to trade receivables is limited by a large, diversified customer base and its geographic dispersion. The Company performs ongoing credit evaluations of its customers' financial condition and requires collateral, such as letters of credit, in certain circumstances.

#### ***Accounts Receivable***

Accounts receivable are recorded net of an allowance for expected credit losses. The Company maintains an allowance for credit losses for the expected failure or inability of its customers to make required payments. The Company recognizes the allowance for expected credit losses at inception and reassesses quarterly based on management's expectation of the asset's collectability. The allowance is based on multiple factors including historical experience with bad debts, the credit quality of the customer base, the aging of such receivables and current macroeconomic conditions, as well as management's expectations of conditions in the future. The Company's allowance for uncollectible accounts receivable is based on management's assessment of the collectability of assets pooled together with similar risk characteristics. Accounts are written off when management determines the account is uncollectible. The following table sets forth the changes in the Company's allowance for doubtful

accounts:

	<b>Balance at Beginning of Period</b>	<b>Provision for Doubtful Debts</b>	<b>Write-offs, net of Recoveries and Other</b>	<b>Balance at End of Period</b>
Fiscal year ended March 31, 2021	\$ 15,246	\$ 178	\$ (2,432)	\$ 12,992
Fiscal year ended March 31, 2022	12,992	2,621	(3,394)	12,219
Fiscal year ended March 31, 2023	12,219	(431)	(3,013)	8,775

### **Inventories**

Inventories are stated at the lower of cost or net realizable value. Cost is determined using the first-in, first-out (FIFO) method. The cost of inventory consists of material, labor, and associated overhead.

### **Property, Plant, and Equipment**

Property, plant, and equipment are recorded at cost and include expenditures that substantially increase the useful lives of the assets. Depreciation is provided using the straight-line method over the estimated useful lives of the assets as follows: 10 to 33 years for buildings and improvements and 3 to 15 years for machinery and equipment.

Maintenance and repairs are expensed as incurred. Interest on capital projects is capitalized during the construction period.

### **Business Combinations**

The Company records an acquisition using the acquisition method of accounting and recognizes the assets acquired and liabilities assumed at their fair values as of the date of the acquisition. The excess of the purchase price over the net tangible and intangible assets is recorded to goodwill. The results of operations of the acquired business are included in the Company's operating results from the date of acquisition.

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

Goodwill and indefinite-lived trademarks are tested for impairment at least annually and whenever events or circumstances occur indicating that a possible impairment may have been incurred. The Company assesses whether goodwill impairment exists using both the qualitative and quantitative assessments. The qualitative assessment involves determining whether events or circumstances exist that indicate it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. If based on this qualitative assessment the Company determines it is more likely than not that the fair value of a reporting unit is less than its carrying amount, or if the Company elects not to perform a qualitative assessment, a quantitative assessment is performed by determining the fair value of the Company's reporting units.

Goodwill is tested for impairment by determining the fair value of the Company's reporting units. These estimated fair values are based on financial projections, certain cash flow measures, and market capitalization.

The Company estimates the fair value of its reporting units using a weighting of fair values derived from both the income approach and the market approach. Under the income approach, the Company calculates the fair value of a reporting unit based on the present value of estimated future cash flows. Cash flow projections are based on management's estimates of revenue growth rates and operating margins, taking into consideration industry and market conditions. The discount rate used is based on the weighted-average cost of capital adjusted for the relevant risk associated with business-specific characteristics and the uncertainty related to the business's ability to execute on the projected cash flows. The market approach estimates fair value based on market multiples of revenue and earnings derived from comparable publicly-traded companies with similar operating and investment characteristics as the reporting unit. The weighting of the fair value derived from the market approach ranges from 0% to 50% depending on the level of comparability of these publicly-traded companies to the reporting unit.

In order to assess the reasonableness of the calculated fair values of its reporting units, the Company also compares the sum of the reporting units' fair values to its market capitalization and calculates an implied control premium (the excess of the sum of the reporting units' fair values over the market capitalization). The Company evaluates the control premium by comparing it to control premiums of recent comparable market transactions.

The Company assesses whether indefinite-lived intangible assets impairment exists using both the qualitative and quantitative assessments. The qualitative assessment involves determining whether events or circumstances exist that indicate it is more likely than not that the fair value of an indefinite-lived intangible asset is less than its carrying amount. If based on this qualitative assessment, the Company determines it is more likely than not that the fair value of an indefinite-lived intangible asset is less than its carrying amount or if the Company elects not to perform a qualitative assessment, a quantitative assessment is performed to determine whether an indefinite-lived intangible asset impairment exists. The Company tests the indefinite-lived intangible assets for impairment by comparing the carrying value to the fair value based on current revenue projections of the related operations, under the relief from royalty method. Any excess of the carrying value over the amount of fair value is recognized as an impairment. Any such impairment is recognized in the reporting period in which it has been identified.

Finite-lived assets such as customer relationships, technology, trademarks, licenses, and non-compete agreements are amortized on a straight-line basis over their estimated useful lives, generally over periods ranging from 3 to 20 years. The Company continually evaluates the reasonableness of the useful lives of these assets.

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

The Company reviews the carrying values of its long-lived assets to be held and used for possible impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable, based on undiscounted estimated cash flows expected to result from its use and eventual disposition. The factors considered by the Company in performing this assessment include current operating results, trends and other economic factors. In assessing the recoverability of the carrying value of a long-lived asset, the Company must make assumptions regarding future cash flows and other factors. If these estimates or the related assumptions change in the future, the Company may be required to record an impairment loss for these assets.

#### ***Environmental Expenditures***

The Company records a loss and establishes a reserve for environmental remediation liabilities when it is probable that an asset has been impaired or a liability exists and the amount of the liability can be reasonably estimated. Reasonable estimates involve judgments made by management after considering a broad range of information including notifications, demands or settlements that have been received from a regulatory authority or private party, estimates performed by independent engineering companies and outside counsel, available facts, existing and proposed technology, the identification of other potentially responsible parties, their ability to contribute and prior experience. These judgments are reviewed quarterly as more information is received and the amounts reserved are updated as necessary. However, the reserves may materially differ from ultimate actual liabilities if the loss contingency is difficult to estimate or if management's judgments turn out to be inaccurate. If management believes no best estimate exists, the minimum probable loss is accrued.

#### ***Derivative Financial Instruments***

The Company utilizes derivative instruments to mitigate volatility related to interest rates, lead prices and foreign currency exposures. The Company does not hold or issue derivative financial instruments for trading or speculative purposes. The Company recognizes derivatives as either assets or liabilities in the accompanying Consolidated Balance Sheets and measures those instruments at fair value. Changes in the fair value of those instruments are reported in AOCI if they qualify for hedge accounting or in earnings if they do not qualify for hedge accounting. Derivatives qualify for hedge accounting if they are designated as hedge instruments and if the hedge is highly effective in achieving offsetting changes in the fair value or cash flows of the asset or liability hedged. For lead and foreign currency forward contracts, effectiveness is measured on a regular basis using statistical analysis and by comparing the overall changes in the expected cash flows of the hedging instrument with the changes in the expected all-in cash outflow required for the underlying lead and foreign currency purchases. This analysis is performed on the initial purchases quarterly that cover the quantities hedged. Accordingly, gains and losses from changes in derivative fair value of effective hedges are deferred and reported in AOCI until the underlying transaction affects earnings. In the case of cross currency fixed interest rate swap agreements, the swaps are remeasured with changes in fair value recognized in foreign currency translation adjustment within AOCI to offset the translation risk from the underlying investments. Balances in the foreign currency translation adjustment accounts remain until the sale or substantially complete liquidation of the foreign entity, upon which they are recognized as a component of income (expense).

The Company has commodity, foreign exchange and interest rate hedging authorization from the Board of Directors and has established a hedging and risk management program that includes the management of market and counterparty risk. Key risk control activities designed to ensure compliance with the risk management program include, but are not limited to, credit review and approval, validation of transactions and market prices, verification of risk and transaction limits, portfolio stress tests,

sensitivity analyses and frequent portfolio reporting, including open positions, determinations of fair value and other risk management metrics.

Market risk is the potential loss the Company and its subsidiaries may incur as a result of price changes associated with a particular financial or commodity instrument. The Company utilizes forward contracts, options, and swaps as part of its risk management strategies, to minimize unanticipated fluctuations in earnings caused by changes in commodity prices, interest rates and / or foreign currency exchange rates. All derivatives are recognized on the balance sheet at their fair value, unless they qualify for the Normal Purchase Normal Sale exemption.

Credit risk is the potential loss the Company may incur due to the counterparty's non-performance. The Company is exposed to credit risk from interest rate, foreign currency and commodity derivatives with financial institutions. The Company has credit policies to manage their credit risk, including the use of an established credit approval process, monitoring of the counterparty positions and the use of master netting agreements.

The Company has elected to offset net derivative positions under master netting arrangements. The Company does not have any positions involving cash collateral (payables or receivables) under a master netting arrangement as of March 31, 2023 and 2022.

The Company does not have any credit-related contingent features associated with its derivative instruments.

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

The Company groups its recurring, non-recurring and disclosure-only fair value measurements into the following levels when making fair value measurement disclosures:

Level 1      Inputs are unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2      Inputs are quoted prices for similar assets or liabilities in an active market, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable and market-corroborated inputs which are derived principally from or corroborated by observable market data.

Level 3      Inputs are derived from valuation techniques in which one or more significant inputs or value drivers are unobservable.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (an exit price). The Company and its subsidiaries use, as appropriate, a market approach (generally, data from market transactions), an income approach (generally, present value techniques and option-pricing models), and / or a cost approach (generally, replacement cost) to measure the fair value of an asset or liability. These valuation approaches incorporate inputs such as observable, independent market data and / or unobservable data that management believes are predicated on the assumptions market participants would use to price an asset or liability. These inputs may incorporate, as applicable, certain risks such as nonperformance risk, which includes credit risk.

Lead contracts, foreign currency contracts and interest rate contracts generally use an income approach to measure the fair value of these contracts, utilizing readily observable inputs, such as forward interest rates (e.g., Secured Overnight Financing Rate "SOFR"), forward foreign currency exchange rates (e.g., GBP and euro) and commodity prices (e.g., London Metals Exchange), as well as inputs that may not be observable, such as credit valuation adjustments. When observable inputs are used to measure all or most of the value of a contract, the contract is classified as Level 2. Over-the-counter (OTC) contracts are valued using quotes obtained from an exchange, binding and non-binding broker quotes. Furthermore, the Company obtains independent quotes from the market to validate the forward price curves. OTC contracts include forwards, swaps and options. To the extent possible, fair value measurements utilize various inputs that include quoted prices for similar contracts or market-corroborated inputs.

When unobservable inputs are significant to the fair value measurement, the asset or liability is classified as Level 3. Additionally, Level 2 fair value measurements include adjustments for credit risk based on the Company's own creditworthiness (for net liabilities) and its counterparties' creditworthiness (for net assets). The Company assumes that observable market prices include sufficient adjustments for liquidity and modeling risks. The Company did not have any fair value measurements that transferred between Level 2 and Level 3 as well as Level 1 and Level 2.

## Income Taxes

The Company accounts for income taxes using the asset and liability approach, which requires deferred tax assets and liabilities be recognized using enacted tax rates to measure the effect of temporary differences between book and tax bases on recorded assets and liabilities. Valuation allowances are recorded to reduce deferred tax assets, if it is more likely than not some portion or all of the deferred tax assets will not be realized. The need to establish valuation allowances against deferred tax assets is assessed quarterly. The primary factors used to assess the likelihood of realization are expected reversals of taxable temporary timing differences, forecasts of future taxable income and available tax planning strategies that could be implemented to realize the net deferred tax assets.

The Company recognizes tax related interest and penalties in income tax expense in its Consolidated Statement of Income.

With respect to accounting for uncertainty in income taxes, the Company evaluates tax positions to determine whether the benefits of tax positions are more likely than not of being sustained upon audit based on the technical merits of the tax position. For tax positions that are more likely than not of being sustained upon audit, the Company recognizes the largest amount of the benefit that is greater than 50% likely of being realized upon ultimate settlement. For tax positions that are not more likely than not of being sustained upon audit, the Company does not recognize any portion of the benefit. If the more likely than not threshold is not met in the period for which a tax position is taken, the Company may subsequently recognize the benefit of that tax position if the tax matter is effectively settled, the statute of limitations expires, or if the more likely than not threshold is met in a subsequent period.

No additional income taxes have been provided for any undistributed foreign earnings or any additional outside basis difference inherent in these entities, as these amounts continue to be indefinitely reinvested in foreign operations.

Regarding the GILTI tax rules, the Company is allowed to make an accounting policy choice of either (1) treating the taxes due on future US inclusions in taxable income as a current-period expense when incurred (“period cost method”) or (2) factoring amounts into a Company’s measurement of its deferred taxes (“deferred method”). The Company has elected the period cost method.

## Deferred Financing Fees

Debt issuance costs that are incurred by the Company in connection with the issuance of debt are deferred and amortized to interest expense over the life of the underlying indebtedness, adjusted to reflect any early repayments and are shown as a deduction from long-term debt.

## Stock-Based Compensation Plans

The Company measures the cost of employee services received in exchange for the award of an equity instrument based on the grant-date fair value of the award, with such cost recognized over the applicable vesting period.

### *Market and Performance condition-based awards*

The Company grants market condition-based awards and performance condition-based awards.

Beginning in fiscal 2017 and until fiscal 2020, the Company granted market condition-based awards (“TSR”). A participant may earn between 0% to 200% of the number of awards granted, based on the total shareholder return of the Company’s common stock over a three-year period, relative to the shareholder return of a defined peer group. The awards cliff vest on the third anniversary of the date of grant and are settled in common stock on the first anniversary of the vesting date. The TSR is calculated by dividing the sixty or ninety calendar day average price at end of the period (as applicable) and the reinvested dividends thereon by such sixty or ninety calendar day average price at start of the period. The maximum number of awards earned is capped at 200% of the target award. Additionally, no payout will be awarded in the event that the TSR at the vesting date reflects less than a 25% return from the average price at the grant date. These share units are similar to the share units granted prior to fiscal 2016, except that under these awards, the targets are more difficult to achieve as they are tied to the TSR of a defined peer group. The fair value of these awards is estimated at the date of grant, using a Monte Carlo Simulation.

The Company recognizes compensation expense using the straight-line method over the life of the market condition-based awards except for those issued to certain retirement-eligible participants, which are expensed on an accelerated basis.

In fiscal 2019 and fiscal 2020, the Company granted performance condition-based awards (“PSU”). A participant may earn between 0% to 200% of the number of awards granted, based on the Company’s cumulative adjusted earnings per share performance over a three-year period. The vesting of these awards is contingent upon meeting or exceeding performance conditions. The awards cliff vest on the third anniversary of the date of grant and are settled in common stock on the first anniversary of the vesting date. The maximum number of awards earned is capped at 200% of the target award. Expense for the performance condition-based award is recorded when the achievement of the performance condition is considered probable of achievement and is recorded on a straight-line basis over the requisite service period. If such performance criteria are not met, no compensation cost is recognized, and any recognized compensation cost is reversed. The closing stock price on the date of grant, adjusted for a discount to reflect the illiquidity inherent in the PSUs, represents the grant-date fair value for these awards.

#### *Restricted Stock Units*

The fair value of restricted stock units is based on the closing market price of the Company’s common stock on the date of grant. These awards generally vest, and are settled in common stock, at 25% per year, over a four-year period from the date of grant. The Company recognizes compensation expense using the straight-line method over the life of the restricted stock units.

#### *Stock Options*

The fair value of the options granted is estimated at the date of grant using the Black-Scholes option-pricing model utilizing assumptions based on historical data and current market data. The assumptions include expected term of the options, risk-free interest rate, expected volatility, and dividend yield. The expected term represents the expected amount of time that options granted are expected to be outstanding, based on historical and forecasted exercise behavior. The risk-free rate is based on the rate at the grant date of zero-coupon U.S. Treasury Notes with a term equal to the expected term of the option. Expected volatility is estimated using historical volatility rates based on historical weekly price changes over a term equal to the expected term of the options. The Company’s dividend yield is based on historical data. The Company recognizes compensation expense using the straight-line method over the vesting period of the options except for those issued to certain retirement-eligible participants, which are expensed on an accelerated basis.

#### *Forfeitures*

Forfeitures of share-based awards are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

#### *Earnings Per Share*

Basic earnings per common share (“EPS”) are computed by dividing net earnings attributable to EnerSys stockholders by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that would occur if securities or other contracts to issue common stock were exercised or converted into common stock. At March 31, 2023, 2022 and 2021, the Company had outstanding stock options, restricted stock units, market condition and performance condition-based awards, which could potentially dilute basic earnings per share in the future.

#### *Segment Reporting*

The Company's chief operating decision maker, or CODM (the Company's Chief Executive Officer), reviews financial information for purposes of assessing business performance and allocating resources, by focusing on the lines of business on a global basis. The Company excludes certain items that are not included in the segment performance as these are managed and viewed on a consolidated basis. The Company identifies the following as its three operating segments, based on lines of business:

- **Energy Systems** - uninterruptible power systems, or “UPS” applications for computer and computer-controlled systems used in data centers, as well as telecommunications systems, switchgear and electrical control systems used in industrial facilities and electric utilities, large-scale energy storage and energy pipelines. Energy Systems also includes highly integrated power solutions and services to broadband, telecom, renewable and industrial customers, as well as thermally managed cabinets and enclosures for electronic equipment and batteries.
- **Motive Power** - power for electric industrial forklifts used in manufacturing, warehousing and other material handling applications as well as mining equipment, diesel locomotive starting and other rail equipment; and
- **Specialty** - premium batteries for starting, lighting and ignition applications in premium automotive and large over-the-road trucks, energy storage solutions for satellites, military land vehicles, aircraft, submarines, tactical vehicles, as well as medical devices and equipment.

## **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. These estimates and assumptions take into account historical and forward looking factors that the Company believes are reasonable, and the Company's estimates and assumptions may evolve as conditions change. Actual results could differ from those estimates.

Examples of significant estimates include the allowance for credit losses, the recoverability of property, plant and equipment, the incremental borrowing rate for lease liabilities, the recoverability of intangible assets and other long-lived assets, fair value measurements, including those related to financial instruments, goodwill and intangible assets, valuation allowances on tax assets, pension and postretirement benefit obligations, contingencies and the identification and valuation of assets acquired and liabilities assumed in connection with business combinations.

## **2. Revenue Recognition**

The Company's revenues by reportable segments are presented in Note 23.

Service revenues for fiscal 2023, 2022 and 2021 amounted to \$400,798, \$353,088 and \$296,213, respectively.

A small portion of the Company's customer arrangements oblige the Company to create customized products for its customers that require the bundling of both products and services into a single performance obligation because the individual products and services that are required to fulfill the customer requirements do not meet the definition for a distinct performance obligation. These customized products generally have no alternative use to the Company and the terms and conditions of these arrangements give the Company the enforceable right to payment for performance completed to date, including a reasonable profit margin. For these arrangements, control transfers over time and the Company measures progress towards completion by selecting the input or output method that best depicts the transfer of control of the underlying goods and services to the customer for each respective arrangement. Methods used by the Company to measure progress toward completion include labor hours, costs incurred and units of production. Revenues recognized over time for fiscal 2023, 2022 and 2021 amounted to \$244,013, \$193,824 and \$155,217, respectively.

On March 31, 2023, the aggregate transaction price allocated to unsatisfied (or partially unsatisfied) performance obligations was approximately \$137,654, of which, the Company estimates that approximately \$128,914 will be recognized as revenue in fiscal 2024, \$8,740 in fiscal 2025.

Any payments that are received from a customer in advance, prior to the satisfaction of a related performance obligation and billings in excess of revenue recognized, are deferred and treated as a contract liability. Advance payments and billings in excess of revenue recognized are classified as current or non-current based on the timing of when recognition of revenue is expected. As of March 31, 2023, the current and non-current portion of contract liabilities were \$34,594 and \$1,437, respectively. As of March 31, 2022, the current and non-current portion of contract liabilities were \$27,870 and \$1,387, respectively. Revenues recognized during fiscal 2023 and fiscal 2022, that were included in the contract liability at the beginning of the year, amounted to \$9,799 and \$6,775, respectively.

Amounts representing work completed and not billed to customers represent contract assets and were \$48,616 and \$59,924 as of March 31, 2023 and March 31, 2022, respectively.

The Company uses historic customer product return data as a basis of estimation for customer returns and records the reduction of sales at the time revenue is recognized. At March 31, 2023, the right of return asset related to the value of inventory anticipated to be returned from customers was \$5,380 and refund liability representing amounts estimated to be refunded to customers was \$9,602.

## **3. Leases**

The Company leases manufacturing facilities, distribution centers, office space, vehicles and other equipment under non-cancellable leases with initial terms typically ranging from 1 to 16 years. At contract inception, the Company reviews the terms

of the arrangement to determine if the contract is or contains a lease. Guidance in Topic 842 is used to evaluate whether the contract has an identified asset; if the Company has the right to obtain substantially all economic benefits from the asset; and if it has the right to direct the use of the underlying asset. When determining if a contract has an identified asset, the Company considers both explicit and implicit assets, and whether the supplier has the right to substitute the asset. When determining if the Company has the right to obtain substantially all economic benefits from the asset, the Company considers the primary outputs of the identified asset throughout the period of use and determines if it receives greater than 90% of those benefits. When determining if it has the right to direct the use of an underlying asset, the Company considers if it has the right to direct how and for what purpose the asset is used throughout the period of use and if it controls the decision-making rights over the asset.

Lease terms may include options to extend or terminate the lease. The Company exercises its judgment to determine the term of those leases when extension or termination options are present and include such options in the calculation of the lease term when it is reasonably certain that the Company will exercise those options.

The Company has elected to include both lease and non-lease components in the determination of lease payments for all asset classes. Payments made to a lessor for items such as taxes, insurance, common area maintenance, or other costs commonly referred to as executory costs, are also included in lease payments if they are fixed. The fixed portion of these payments are included in the calculation of the lease liability, while any variable portion would be recognized as variable lease expenses, when incurred. Variable payments made to third parties for these, or similar costs, such as utilities, are not included in the calculation of lease payments.

Both finance and operating leases are reflected as liabilities on the commencement date of the lease based on the present value of the lease payments to be made over the lease term. As most of the leases do not provide an implicit rate, the Company has exercised judgment in electing the incremental borrowing rate based on the information available when the lease commences to determine the present value of future payments. Right-of-use assets are valued at the initial measurement of the lease liability, plus any initial direct costs or rent prepayments and reduced by any lease incentives and any deferred lease payments.

Operating lease expense is recognized on a straight-line basis over the lease term. Finance lease expense includes depreciation, which is recognized on a straight-line basis over the expected life of the leased asset, and interest expense, which is recognized following an effective interest rate method.

Short term leases with an initial term of 12 months or less are not presented on the balance sheet and expense is recognized as incurred. The current and non-current portion of operating lease liabilities are reflected in accrued expenses and other liabilities, respectively, on the consolidated balance sheets. The right-of-use assets relating to operating and finance leases are reflected in other assets and property, plant and equipment, respectively, on the consolidated balance sheets.

The following table presents lease assets and liabilities and their balance sheet classification:

	Classification	As of March 31, 2023		As of March 31, 2022	
<b>Operating Leases:</b>					
Right-of-use assets	Other assets	\$ 85,237	\$ 71,085		
Operating lease current liabilities	Accrued expenses	21,230		20,086	
Operating lease non-current liabilities	Other liabilities	66,555		52,904	
<b>Finance Leases:</b>					
Right-of-use assets	Property, plant, and equipment, net	\$ 342	\$ 344		
Finance lease current liabilities	Current portion of finance leases	90		185	
Finance lease non-current liabilities	Finance leases	254		231	

[Table of Contents](#)

The components of lease expense for the fiscal years ended March 31, 2023 and March 31, 2022 were as follows:

	Classification	March 31, 2023		March 31, 2022	
<b>Operating Leases:</b>					
Operating lease cost	Operating expenses	\$ 20,232		\$ 26,392	
Variable lease cost	Operating expenses	9,816		9,620	
Short term lease cost	Operating expenses	4,310		6,218	
<b>Finance Leases:</b>					
Depreciation	Operating expenses	\$ 95		\$ 233	
Interest expense	Interest expense	10		26	
Total		<u>\$ 34,463</u>		<u>\$ 42,489</u>	

The following table presents the weighted average lease term and discount rates for leases as of March 31, 2023 and March 31, 2022:

	March 31, 2023	March 31, 2022
<b>Operating Leases:</b>		
Weighted average remaining lease term (years)	5.9 years	6.1 years
Weighted average discount rate	4.93%	4.43%
<b>Finance Leases:</b>		
Weighted average remaining lease term (years)	3.7 years	2.3 years
Weighted average discount rate	6.79%	4.79%

The following table presents future payments due under leases reconciled to lease liabilities as of March 31, 2023:

	Finance Leases	Operating Leases
Year ended March 31,		
2024	\$ 121	\$ 24,824
2025	101	20,141
2026	80	16,122
2027	55	13,338
2028	26	9,550
Thereafter	—	17,736
Total undiscounted lease payments	383	101,711
Present value discount	39	13,926
Lease liability	<u>\$ 344</u>	<u>\$ 87,785</u>

The following table presents supplemental disclosures of cash flow information related to leases for the fiscal years ended March 31, 2023 and March 31, 2022:

	March 31, 2023	March 31, 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from finance leases	\$ 15	\$ 26
Operating cash flows from operating leases	27,176	26,731
Financing cash flows from finance leases	151	238
Supplemental non-cash information on lease liabilities arising from right-of-use assets:		
Right-of-use assets obtained in exchange for new finance lease liabilities	\$ 254	—
Right-of-use assets obtained in exchange for new operating lease liabilities	24,423	33,493

#### 4. Accounts Receivable

	March 31,	
	2023	2022
Accounts receivable	\$ 646,592	\$ 731,653
Allowance for doubtful accounts	8,775	12,219
Accounts receivable, net	<u>\$ 637,817</u>	<u>\$ 719,434</u>

During fiscal 2023, the Company entered into a Receivables Purchase Agreement (RPA), under which the Company continuously sells its interest in designated pools of trade accounts receivables, at a discount, to a special purpose entity, which in turn sells certain of the receivables to an unaffiliated financial institution ("unaffiliated financial institution") on a monthly basis. The Company may sell certain US-originated accounts receivable balances up to a maximum amount of \$150,000. In return for these sales, the Company receives a cash payment equal to the face value of the receivables and is charged a fee of Secured Overnight Financing Rate ("SOFR") plus 85 basis points against the sold receivable balance. The program is conducted through EnerSys Finance LLC ("EnerSys Finance"), an entity structured to be bankruptcy remote, and matures in December 2025. The Company is deemed the primary beneficiary of EnerSys Finance as the Company has both the power to direct the activities that most significantly impact the entity's economic performance and the obligation to absorb losses or the right to receive the benefits that could potentially be significant to the entity from the transfer of the trade accounts receivables into the special purpose entity. Accordingly, EnerSys Finance is included in the Company's Consolidated Financial Statements.

Receivables sold to unaffiliated financial institutions under the program are excluded from "Accounts receivable, net" on the Company's Consolidated Balance Sheets, and cash receipts are reflected as cash provided by operating activities on the Consolidated Statements of Cash Flows. The purchase price is received in cash when the receivables are sold, and fees charged relating to this balance are recorded to other (income) expense. Certain unsold receivables held by EnerSys Finance serve as collateral to unaffiliated financial institutions. These unsold receivables are included in "Accounts receivable, net" in the Company's Consolidated Balance Sheets. The Company continues servicing the receivables which were sold and in exchange receives a servicing fee from EnerSys Finance under the program.

During fiscal 2023, the Company sold \$343,013 of accounts receivables for approximately \$192,713 in net proceeds to an unaffiliated financial institution, of which \$193,013 were collected as of March 31, 2023. Total collateralized accounts receivables of approximately \$274,121, were held by EnerSys Finance at March 31, 2023.

Any accounts receivables held by EnerSys Finance would likely not be available to other creditors of the Company in the event of bankruptcy or insolvency proceedings relating to the Company until the outstanding balances under the RPA are satisfied. Additionally, the financial obligations of EnerSys Finance to the unaffiliated financial institutions under the program are limited to the assets it owns and there is no recourse to the Company for receivables that are uncollectible as a result of the insolvency of EnerSys Finance or its inability to pay the account debtors.

#### 5. Inventories

	March 31,	
	2023	2022
Raw materials	\$ 323,418	\$ 260,604
Work-in-process	123,401	109,441
Finished goods	350,979	345,667
Total	<u>\$ 797,798</u>	<u>\$ 715,712</u>

## 6. Property, Plant, and Equipment

Property, plant, and equipment consist of:

	March 31,	
	2023	2022
Land, buildings, and improvements	\$ 312,294	\$ 313,090
Machinery and equipment	881,198	851,251
Construction in progress	75,053	69,550
	1,268,545	1,233,891
Less accumulated depreciation	(755,262)	(730,627)
Total	\$ 513,283	\$ 503,264

Depreciation expense for the fiscal years ended March 31, 2023, 2022, and 2021 totaled \$60,405, \$62,584, and \$60,956, respectively. Interest capitalized in connection with major capital expenditures amounted to \$857, \$447, and \$1,319 for the fiscal years ended March 31, 2023, 2022 and 2021, respectively.

## 7. Goodwill and Other Intangible Assets

### *Other Intangible Assets*

Information regarding the Company's other intangible assets are as follows:

	March 31,					
	2023			2022		
	Gross Amount	Accumulated Amortization	Net Amount	Gross Amount	Accumulated Amortization	Net Amount
<b>Indefinite-lived intangible assets:</b>						
Trademarks	\$ 144,702	\$ (953)	\$ 143,749	\$ 145,808	\$ (953)	\$ 144,855
<b>Finite-lived intangible assets:</b>						
Customer relationships	295,293	(130,262)	165,031	298,577	(109,820)	188,757
Non-compete	2,825	(2,825)	—	2,825	(2,825)	—
Technology	96,713	(47,585)	49,128	97,367	(38,712)	58,655
Trademarks	8,946	(6,442)	2,504	8,947	(5,012)	3,935
Licenses	1,196	(1,196)	—	1,196	(1,196)	—
<b>Total</b>	<b>\$ 549,675</b>	<b>\$ (189,263)</b>	<b>\$ 360,412</b>	<b>\$ 554,720</b>	<b>\$ (158,518)</b>	<b>\$ 396,202</b>

The Company's amortization expense related to finite-lived intangible assets was \$30,748, \$33,294, and \$33,126, for the years ended March 31, 2023, 2022 and 2021, respectively. The expected amortization expense based on the finite-lived intangible assets as of March 31, 2023, is \$27,648 in fiscal 2024, \$26,530 in fiscal 2025, \$25,603 in fiscal 2026, \$24,780 in fiscal 2027 and \$24,275 in fiscal 2028.

### *Goodwill*

The following table presents the changes in the carrying amount of goodwill by segment during fiscal 2022 and 2023:

	Energy Systems	Motive Power	Specialty	Total
Balance at March 31, 2021	\$ 279,676	\$ 327,055	\$ 98,862	\$ 705,593
Foreign currency translation adjustment	(215)	(3,752)	(986)	(4,953)
Balance at March 31, 2022	\$ 279,461	\$ 323,303	\$ 97,876	\$ 700,640
Foreign currency translation adjustment	(21,257)	(1,773)	(895)	(23,925)
Balance at March 31, 2023	\$ 258,204	\$ 321,530	\$ 96,981	\$ 676,715

***Impairment of goodwill, finite and indefinite-lived intangibles***

Goodwill is tested annually for impairment during the fourth quarter or earlier upon the occurrence of certain events or substantive changes in circumstances that indicate goodwill is more likely than not impaired. The Company did not record any impairment relating to its goodwill during fiscal 2023, 2022, and 2021.

During the fourth quarter of fiscal 2023 and 2022, the Company recorded non-cash charges of \$480 and \$1,178, respectively, related to impairment of indefinite-lived trademarks under the caption “Impairment of indefinite-lived intangibles” in the Consolidated Statements of Income. Management completed its evaluation of key inputs used to estimate the fair value of its indefinite-lived trademarks and determined that an impairment charge was appropriate.

The Company estimated tax-deductible goodwill to be approximately \$86,709 and \$101,499 as of March 31, 2023 and 2022, respectively.

**8. Prepaid and Other Current Assets**

Prepaid and other current assets consist of the following:

	<b>March 31,</b>	
	<b>2023</b>	<b>2022</b>
Contract assets	\$ 48,616	\$ 59,924
Prepaid non-income taxes	17,946	25,585
Non-trade receivables	6,978	16,670
Prepaid income taxes	4,915	7,162
Other	35,146	46,218
<b>Total</b>	<b>\$ 113,601</b>	<b>\$ 155,559</b>

**9. Accrued Expenses**

Accrued expenses consist of the following:

	<b>March 31,</b>	
	<b>2023</b>	<b>2022</b>
Payroll and benefits	\$ 80,826	\$ 81,058
Accrued selling expenses	47,330	48,894
Contract liabilities	34,594	27,870
Warranty	24,226	20,716
Operating lease liabilities	21,230	20,086
VAT and other non-income taxes	15,321	16,458
Freight	16,482	14,167
Income taxes payable	8,152	1,229
Interest	7,531	10,793
Pension	1,314	1,294
Restructuring	445	1,030
Other	51,496	46,170
<b>Total</b>	<b>\$ 308,947</b>	<b>\$ 289,765</b>

- (1) Income taxes payable includes amounts relating to the Tax Act - Transition Tax totaling \$11,572 and \$6,172 net of income taxes payable in a prepaid position of \$3,420 and \$4,943 for fiscal 2023 and fiscal 2022, respectively. .

## 10. Debt

The following summarizes the Company's long-term debt as of March 31, 2023 and March 31, 2022:

	2023		2022	
	Principal	Unamortized Issuance Costs	Principal	Unamortized Issuance Costs
Senior Notes	\$ 300,000	\$ 2,705	\$ 600,000	\$ 3,905
Second Amended Credit Facility, due 2026	748,413	3,719	650,268	3,361
	<u>\$ 1,048,413</u>	<u>\$ 6,424</u>	<u>\$ 1,250,268</u>	<u>\$ 7,266</u>
Less: Unamortized issuance costs	6,424		7,266	
Long-term debt, net of unamortized issuance costs	<u>\$ 1,041,989</u>		<u>\$ 1,243,002</u>	

The Company's Senior Notes comprise the following:

### 4.375% Senior Notes due 2027

On December 11, 2019, the Company issued \$300,000 in aggregate principal amount of its 4.375% Senior Notes due December 15, 2027 (the "2027 Notes"). Proceeds from this offering, net of debt issuance costs were \$296,250 and were utilized to pay down the Amended 2017 Revolver (defined below). The 2027 Notes bear interest at a rate of 4.375% per annum accruing from December 11, 2019. Interest is payable semiannually in arrears on June 15 and December 15 of each year, commencing on June 15, 2020. The 2027 Notes mature on December 15, 2027, unless earlier redeemed or repurchased in full and are unsecured and unsubordinated obligations of the Company. They are fully and unconditionally guaranteed, jointly and severally, by certain of its subsidiaries that are guarantors under the Fourth Amended Credit Facility (defined below). These guarantees are unsecured and unsubordinated obligations of such guarantors.

The Company may redeem, prior to September 15, 2027, all or a portion of the 2027 Notes at a price equal to 100% of the principal amount of the 2027 Notes to be redeemed, plus accrued and unpaid interest and a "make whole" premium to, but excluding, the redemption date. The Company may redeem, on or after September 15, 2027, all or a portion of the 2027 Notes at a price equal to 100% of the principal amount of the 2027 Notes, plus accrued and unpaid interest to, but excluding, the redemption date. If a change of control triggering event occurs, the Company will be required to offer to repurchase the 2027 Notes at a price in cash equal to 101% of the aggregate principal amount of the 2027 Notes, plus accrued and unpaid interest to, but excluding, the date of repurchase. The 2027 Notes were rank pari passu with the 2023 Notes (defined below) prior to their redemption.

### 5.00% Senior Notes due 2023

The 5% Senior Notes due April 30, 2023 (the "2023 Notes") bear interest at a rate of 5.00% per annum and have an original face value of \$300,000. Interest is payable semiannually in arrears on April 30 and October 30 of each year and commenced on October 30, 2015. The 2023 Notes will mature on April 30, 2023, unless earlier redeemed or repurchased in full. The 2023 Notes are unsecured and unsubordinated obligations of the Company. The 2023 Notes are fully and unconditionally guaranteed, jointly and severally, by certain of its subsidiaries that are guarantors under the Second Amended Credit Facility. These guarantees are unsecured and unsubordinated obligations of such guarantors.

On February 10, 2023, the Company issued a notice of redemption for all \$300,000 aggregate principal amount of its outstanding 5.00% Senior Notes due 2023 (the "2023 Notes") with a redemption date (the "Redemption Date") on March 13, 2023, at a redemption price equal to 100% of the 2023 Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the Redemption Date. As of March 31, 2023, all principal and unamortized issuance costs are unrecognized from the balance sheet.

### 2017 Credit Facility and Subsequent Amendments

In fiscal 2018, the Company entered into a credit facility (the "2017 Credit Facility"). The 2017 Credit Facility scheduled to mature on September 30, 2022, initially comprised a \$600,000 senior secured revolving credit facility ("2017 Revolver") and a

\$150,000 senior secured term loan (“2017 Term Loan”). The Company utilized the borrowings from the 2017 Credit Facility to repay its pre-existing credit facility.

In fiscal 2019, the Company amended the 2017 Credit Facility (as amended, the “Amended Credit Facility”) to fund the Alpha acquisition. The Amended Credit Facility consisted of \$449,105 senior secured term loans (the “Amended Term Loan”), including a CAD 133,050 (\$99,105) senior secured term loan and a \$700,000 senior secured revolving credit facility (the “Amended Revolver”). The amendment resulted in an increase of the 2017 Term Loan and the 2017 Revolver by \$299,105 and \$100,000, respectively.

During the second quarter of fiscal 2022, the Company entered into a second amendment to the 2017 Credit Facility (as amended, the “Second Amended Credit Facility”). The Second Amended Credit Facility, scheduled to mature on September 30, 2026, consists of a \$130,000 senior secured term loan (the “Second Amended Term Loan”), a CAD 106,440 (\$84,229) senior secured term loan and an \$850,000 senior secured revolving credit facility (the “Second Amended Revolver”). The second amendment resulted in a decrease of the Amended Term Loan by \$150,000 and an increase of the Amended Revolver by \$150,000.

During the second quarter of fiscal 2023, the Company entered into a third amendment to the 2017 Credit Facility (as amended, the “Third Amended Credit Facility”). The Third Amended Credit Facility provides a new incremental delayed-draw senior secured term loan up to \$300,000 (the “Third Amended Term Loan”), which shall be available to draw at any time until March 15, 2023. Once drawn, the funds will mature on September 30, 2026, the same as the Company’s Second Amended Term loan and Second Amended Revolver. In connection with the agreement, the Company incurred \$1,161 in third party administrative and legal fees recognized in interest expense and capitalized \$1,096 in charges from existing lenders as a deferred asset. During the fourth quarter, the Company drew \$300,000 in the form of the Third Amended Term Loan. Additionally, the Company derecognized the capitalized deferred asset and recognized the \$1,096 as a deferred financing costs.

During the fourth quarter of fiscal 2023, the Company entered into a fourth amendment to the 2017 Credit Facility (as amended, the “Fourth Amended Credit Facility”). The Fourth Amended Credit Facility replaces the London Interbank Offered Rate (“LIBOR”) with the Secured Overnight Financing Rate (“SOFR”) in the calculation of interest for both the Second Amended Revolver and the Second Amended Term Loan.

Subsequent to the fourth amendment, the quarterly installments payable on the Second Amended Term Loan are \$2,608 beginning December 31, 2022, \$3,912 beginning December 31, 2024 and \$5,216 beginning December 31, 2025 with a final payment of \$156,472 on September 30, 2026. The Fourth Amended Credit Facility may be increased by an aggregate amount of \$350,000 in revolving commitments and /or one or more new tranches of term loans, under certain conditions. Both the Second Amended Revolver and the Second Amended Term Loan bear interest, at the Company’s option, at a rate per annum equal to either (i) the SOFR or Canadian Dollar Offered Rate (“CDOR”) plus (i) Term SOFR plus between 1.125% and 2.25% (currently 1.25% and based on the Company’s consolidated net leverage ratio) or (ii) the U.S. Dollar Base Rate (which equals, for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective Rate plus 0.50%, (b) Bank of America “Prime Rate” and (c) the Eurocurrency Base Rate plus 1%; provided that, if the Base Rate shall be less than zero, such rate shall be deemed zero) (iii) the CDOR Base Rate equal to the higher of (a) Bank of America “Prime Rate” and (b) average 30-day CDOR rate plus 0.50%.

The quarterly installments payable on the Third Amended Term Loan are \$3,750 beginning June 30, 2023, \$5,625 beginning December 31, 2024 and \$7,500 beginning December 31, 2025 with a final payment of \$232,500 on September 30, 2026. The Third Amended Term Loan bears interest, at the Company’s option, at a rate per annum equal to either (i) the Secured Overnight Financing Rate (“SOFR”) plus 10 basis points plus (i) Term SOFR plus between 1.375% and 2.50% (currently 1.50% and based on the Company’s consolidated net leverage ratio) or (ii) the U.S. Dollar Base Rate plus between 0.375% and 1.50%, which equals, for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective Rate plus 0.50%, (b) Bank of America “Prime Rate” and (c) the Term SOFR plus 1%; provided that, if the Base Rate shall be less than zero, such rate shall be deemed zero). Until the funds were drawn on March 13, 2023, the Company paid a commitment fee of 0.175% to 0.35% at a rate per annum on the unused portion.

Obligations under the Fourth Amended Credit Facility are secured by substantially all of the Company’s existing and future acquired assets, including substantially all of the capital stock of the Company’s United States subsidiaries that are guarantors under the Second Amended Credit Facility and up to 65% of the capital stock of certain of the Company’s foreign subsidiaries that are owned by the Company’s United States subsidiaries.

The Fourth Amended Credit Facility allows for up to two temporary increases in the maximum leverage ratio to 4.50x from 4.00x to 4.25x for a four quarter period following an acquisition larger than \$250,000. Effective with the Third Amended Credit Facility, the maximum leverage ratio increased from 3.50x to 4.25x effective to the last day of the second quarter of fiscal year 2024 and decreasing subsequently to 4.00x.

As of March 31, 2023, the Company had \$245,000 outstanding under the Second Amended Revolver, \$203,413 under the Second Amended Term Loan, and \$300,000 outstanding under the Third Amended Term Loan.

The scheduled repayments within the next twelve months of fiscal 2024, relating to the Second and Third Amended Term Loans is \$10,431 and \$15,000, respectively, and is classified as long-term debt, as the Company expects to refinance the future quarterly payments with revolver borrowings under the Second Amended Credit Facility.

#### ***Interest Rates on Long Term Debt***

The weighted average interest rate on the long term debt at March 31, 2023 and March 31, 2022, was 4.6% and 3.3%, respectively.

#### ***Interest Paid***

The Company paid in cash, \$58,368, \$37,776 and \$36,365, net of interest received, for interest during the fiscal years ended March 31, 2023, 2022 and 2021, respectively.

#### ***Covenants***

The Company's financing agreements contain various covenants, which, absent prepayment in full of the indebtedness and other obligations, or the receipt of waivers, would limit the Company's ability to conduct certain specified business transactions including incurring debt, mergers, consolidations or similar transactions, buying or selling assets out of the ordinary course of business, engaging in sale and leaseback transactions, paying dividends and certain other actions. The Company is in compliance with all such covenants.

#### ***Short-Term Debt***

As of March 31, 2023 and 2022, the Company had \$30,642 and \$55,084, respectively, of short-term borrowings. The weighted-average interest rate on these borrowings was approximately 7.0% and 2.4%, respectively, for fiscal years ended March 31, 2023 and 2022.

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

As of March 31, 2023 and 2022, the Company had \$3,565 and \$2,959, respectively, of standby letters of credit.

#### ***Debt Issuance Costs***

In fiscal 2023, the Company capitalized \$1,122 in debt issuance costs in connection with the Third and Fourth Amended Credit Facilities. In fiscal 2022, the Company capitalized \$2,952 in debt issuance costs and wrote off \$128 of unamortized debt issuance costs in connection with the Second Amended Credit Facility. Amortization expense, relating to debt issuance costs, included in interest expense was \$1,964, \$2,107, and \$2,072 for the fiscal years ended March 31, 2023, 2022 and 2021, respectively. Debt issuance costs, net of accumulated amortization, totaled \$6,424 and \$7,266 as of March 31, 2023 and 2022, respectively.

#### ***Available Lines of Credit***

As of March 31, 2023 and 2022, the Company had available and undrawn, under all its lines of credit, \$693,444 and \$482,305, respectively, including \$90,839 and \$69,430, respectively, of uncommitted lines of credit as of March 31, 2023 and March 31, 2022.

## 11. Other Liabilities

Other liabilities consist of the following:

	March 31,	
	2023	2022
Operating lease liabilities	\$ 66,555	\$ 52,904
Tax Act - Transition Tax	34,715	46,587
Warranty	32,404	34,262
Pension	24,528	28,566
Net investment hedges	15,760	4,090
Liability for uncertain tax positions	3,930	5,210
Contract liabilities	1,437	1,387
Other	11,783	10,774
Total	<u>\$ 191,112</u>	<u>\$ 183,780</u>

## 12. Fair Value of Financial Instruments

### *Recurring Fair Value Measurements*

The following tables represent the financial assets and (liabilities) measured at fair value on a recurring basis as of March 31, 2023 and March 31, 2022 and the basis for that measurement:

	Total Fair Value Measurement March 31, 2023	Quoted Price in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Lead forward contracts	\$ (89)	\$ —	\$ (89)	\$ —
Foreign currency forward contracts	923	—	923	—
Interest rate swaps	(1,162)	—	(1,162)	—
Net investment hedges	(15,760)	—	(15,760)	—
Total derivatives	<u>\$ (16,088)</u>	<u>\$ —</u>	<u>\$ (16,088)</u>	<u>\$ —</u>

	Total Fair Value Measurement March 31, 2022	Quoted Price in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Lead forward contracts	\$ 2,520	\$ —	\$ 2,520	\$ —
Foreign currency forward contracts	(256)	—	(256)	—
Net investment hedges	298	—	298	—
Total derivatives	<u>\$ 2,562</u>	<u>\$ —</u>	<u>\$ 2,562</u>	<u>\$ —</u>

The fair values of lead forward contracts are calculated using observable prices for lead as quoted on the London Metal Exchange (“LME”) and, therefore, were classified as Level 2 within the fair value hierarchy as described in Note 1, Summary of Significant Accounting Policies.

The fair values for foreign currency forward contracts, interest rate swaps, and net investment hedges are based upon current quoted market prices and are classified as Level 2 based on the nature of the underlying market in which these derivatives are traded.

The fair value of interest rate swap agreements are based on observable prices as quoted for receiving the variable one month term SOFR and paying fixed interest rates and, therefore, were classified as Level 2.

### *Financial Instruments*

[Table of Contents](#)

The fair values of the Company's cash and cash equivalents approximate carrying value due to their short maturities.

The fair value of the Company's short-term debt and borrowings under the Second Amended Credit Facility (as defined in Note 10), approximate their respective carrying value, as they are variable rate debt and the terms are comparable to market terms as of the balance sheet dates and are classified as Level 2.

The fair value of the Company's 2027 Notes and 2023 Notes, (collectively, the "Senior Notes") represent the trading values based upon quoted market prices and are classified as Level 2. The 2027 Notes were trading at approximately 92% and 95% of face value on March 31, 2023 and March 31, 2022, respectively. The 2023 Notes, which were redeemed in fiscal 2023 as discussed in Note 10, were trading at approximately 101% of face value on March 31, 2022.

The carrying amounts and estimated fair values of the Company's derivatives and Senior Notes at March 31, 2023 and 2022 were as follows:

	March 31, 2023		March 31, 2022	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
<b>Financial assets:</b>				
Derivatives <sup>(1)</sup>	\$ —	\$ —	\$ 2,562	\$ 2,562
<b>Financial liabilities:</b>				
Senior Notes <sup>(2)</sup>	\$ 300,000	\$ 276,000	\$ 600,000	\$ 585,750
Derivatives <sup>(1)</sup>	(16,088)	(16,088)	—	—

(1) Represents lead, foreign currency forward contracts, interest rate swaps, and net investment hedges (see Note 13 for asset and liability positions of the lead, foreign currency forward contracts and net investment hedges at March 31, 2023 and March 31, 2022).

(2) The fair value amount of the Senior Notes at March 31, 2023 and March 31, 2022 represent the trading value of the instruments.

#### **Non-recurring fair value measurements**

The valuation of goodwill and other intangible assets is based on information and assumptions available to the Company at the time of acquisition, using income and market approaches to determine fair value. The Company tests goodwill and other intangible assets annually for impairment, or when indications of potential impairment exist (see Note 1).

Goodwill is tested for impairment by determining the fair value of the Company's reporting units. The unobservable inputs used to measure the fair value of the reporting units include projected growth rates, profitability, and the risk factor premium added to the discount rate. The remeasurement of the reporting unit fair value is classified as a Level 3 fair value assessment due to the significance of unobservable inputs developed using company-specific information.

The inputs used to measure the fair value of other intangible assets were largely unobservable and accordingly were also classified as Level 3. The fair value of trademarks is based on an estimate of the royalties saved that would have been paid to a third party had the Company not owned the trademark. The fair value of other indefinite-lived intangibles was estimated using the income approach, based on cash flow projections of revenue growth rates, taking into consideration industry and market conditions.

In connection with the annual impairment testing conducted as of January 2, 2023, two of the Company's indefinite-lived trademarks, which were acquired through acquisitions, were recorded at fair value on a non-recurring basis at \$6,900 and the remeasurements resulted in an impairment of \$480. In determining the fair value of these assets, the Company used a royalty rate of 1.5% based on comparable market rates and used discount rate of 24.0%. In fiscal 2022, the Company recorded an impairment relating to additional two trademarks, which were recorded at a fair value on a non-recurring basis of \$980 and the remeasurement resulted in an impairment of \$1,178. In determining the fair value of these assets, the Company used a royalty rate of 1.25% based on comparable market rates and used a discount rate of 13.0% and 14.5%.

These impairment charges relating to goodwill and indefinite-lived trademarks are included under the captions *Impairment of goodwill* and *Impairment of indefinite-lived intangibles* in the Consolidated Statements of Income.

Ooltewah

On June 29, 2022, the Company committed to a plan to close its facility in Ooltewah, Tennessee, which focused on manufacturing flooded motive power batteries for electric forklifts. Management determined that future demand for traditional motive power flooded cells will decrease as customers transition to maintenance free product solutions in lithium and Thin Plate Pure Lead (TPPL). As a result, the Company concluded that the carrying value of the asset group was not recoverable and recorded during the first quarter of fiscal 2023 a write-off of \$7,300 of the fixed assets, for which there is expected to be no salvageable value. The valuation technique used to measure the fair value of fixed assets was a combination of the income and market approaches. The inputs used to measure the fair value of these fixed assets under the income approach were largely unobservable and accordingly were classified as Level 3.

#### *Russia*

In February 2022, as a result of the Russia-Ukraine conflict, economic sanctions were imposed on Russian individuals and entities, including financial institutions, by countries around the world, including the U.S. and the European Union. On March 3, 2022, the Company announced that it was indefinitely suspending its operations in Russia in order to comply with the sanctions. As a result of this decision, the Company wrote off net assets of \$3,999 relating to its Russian subsidiary, based on a non-recurring basis.

#### *Vijayawada, India*

During fiscal 2021, the Company committed to a plan to close its facility in Vijayawada, India to align with its strategic vision for the new line of business structure and footprint. As a result of this decision, in fiscal 2022, the Company reclassified property, plant and equipment with a carrying value of \$4,573 to assets held for sale on the Consolidated Balance Sheet and recognized an impairment loss of \$2,973 under the caption *Loss on assets held for sale* on its consolidated statement of income, by recording the carrying value of these assets to their estimated fair value of \$1,600, based on a non-recurring basis. The fair value was based on the expected proceeds, less costs to sell.

#### *Hagen, Germany*

In fiscal 2021, the Company committed to a plan to substantially close all of its facility in Hagen, Germany, which produces flooded motive power batteries for forklifts. Management determined that future demand for the motive power batteries produced at this facility was not sufficient, given the conversion from flooded to maintenance free batteries by customers, the existing number of competitors in the market, as well as the near term decline in demand and increased uncertainty from the pandemic. As a result, the Company concluded that the carrying value of the asset group is not recoverable and recorded a write-off of \$3,975 of the fixed assets to their estimated fair value of \$14,456, which was recognized in the third quarter of fiscal 2021. The valuation technique used to measure the fair value of fixed assets was a combination of the income and market approaches. The inputs used to measure the fair value of these fixed assets under the income approach were largely unobservable and accordingly were classified as Level 3.

### **13. Derivative Financial Instruments**

The Company utilizes derivative instruments to reduce its exposure to fluctuations in commodity prices, foreign exchange rates and interest under established procedures and controls. The Company does not enter into derivative contracts for speculative purposes. The Company's agreements are with creditworthy financial institutions and the Company anticipates performance by counterparties to these contracts and therefore no material loss is expected.

#### ***Derivatives in Cash Flow Hedging Relationships***

##### *Lead Forward Contracts*

The Company enters into lead forward contracts to fix the price for a portion of its lead purchases. Management considers the lead forward contracts to be effective against changes in the cash flows of the underlying lead purchases. The vast majority of such contracts are for a period not extending beyond one year. At March 31, 2023 and 2022, the Company has hedged the price to purchase approximately 50.0 million pounds and 54.0 million pounds of lead, respectively, for a total purchase price of \$47,921 and \$56,768, respectively.

### *Foreign Currency Forward Contracts*

The Company uses foreign currency forward contracts and options to hedge a portion of the Company's foreign currency exposures for lead, as well as other foreign currency exposures so that gains and losses on these contracts offset changes in the underlying foreign currency denominated exposures. The vast majority of such contracts are for a period not extending beyond one year. As of March 31, 2023 and 2022, the Company had entered into a total of \$45,823 and \$29,676, respectively, of such contracts.

### *Interest Rate Swap Agreements*

The Company is exposed to changes in variable interest rates on borrowings under our credit agreement. On a selective basis, from time to time, it enters into interest rate swap agreements to reduce the negative impact that increases in interest rates could have on our outstanding variable rate debt. At March 31, 2023 such agreements effectively convert \$200,000 of our variable-rate debt to a fixed-rate basis, utilizing the one-month term SOFR, as a floating rate reference. Fluctuations in SOFR and fixed rates affect both our net financial investment position and the amount of cash to be paid or received by us under these agreements.

### ***Derivatives in Net Investment Hedging Relationships***

#### *Net Investment Hedges*

The Company uses cross currency fixed interest rate swaps to hedge its net investments in foreign operations against future volatility in the exchange rates between the U.S. Dollar and Euro.

On September 29, 2022, the Company terminated its \$300,000 cross-currency fixed interest rate swap contracts, originally entered into on December 23, 2021, and received a net settlement of \$43,384. The cash proceeds have been included in Proceeds from termination of net investment hedges in our Consolidated Statements of Cash Flows.

On September 29, 2022, the Company entered into cross-currency fixed interest rate swap contracts with an aggregate notional amount of \$150,000, maturing on December 15, 2027. The cross-currency fixed interest rate swap contracts qualify for hedge accounting as a net investment hedging instrument, which allows for them to be remeasured to foreign currency translation adjustment within AOCI ("Accumulated Other Comprehensive Income") to offset the translation risk from those investments. Balances in the foreign currency translation adjustment accounts remain until the sale or substantially complete liquidation of the foreign entity, upon which they are recognized as a component of income (expense).

### ***Impact of Hedging Instruments on AOCI***

In the coming twelve months, the Company anticipates that \$5,818 of pretax gain relating to lead, foreign currency forward contracts, interest rate swaps, and net investment hedges will be reclassified from AOCI as part of cost of goods sold and interest expense. This amount represents the current net unrealized impact of hedging lead, foreign exchange rates and interest rates, which will change as market rates change in the future. This amount will ultimately be realized in the Consolidated Statements of Income as an offset to the corresponding actual changes in lead, foreign exchange rates and lead costs resulting from variable lead cost, foreign exchange and interest rates hedged.

### ***Derivatives not Designated in Hedging Relationships***

#### *Foreign Currency Forward Contracts*

The Company also enters into foreign currency forward contracts to economically hedge foreign currency fluctuations on intercompany loans and foreign currency denominated receivables and payables. These are not designated as hedging instruments and changes in fair value of these instruments are recorded directly in the Consolidated Statements of Income. As of March 31, 2023 and 2022, the notional amount of these contracts was \$102,558 and \$22,990, respectively.

[Table of Contents](#)

Presented below in tabular form is information on the location and amounts of derivative fair values in the Consolidated Balance Sheets and derivative gains and losses in the Consolidated Statements of Income:

**Fair Value of Derivative Instruments**  
**March 31, 2023 and 2022**

	Derivatives and Hedging Activities Designated as Cash Flow Hedges		Derivatives and Hedging Activities Designated as Net Investment Hedges		Derivatives and Hedging Activities Not Designated as Hedging Instruments	
	March 31, 2023	March 31, 2022	March 31, 2023	March 31, 2022	March 31, 2023	March 31, 2022
<b>Prepaid and other current assets:</b>						
Lead forward contracts	\$ —	\$ 2,520	\$ —	\$ —	\$ —	\$ —
Foreign currency forward contracts	723	256	—	—	200	—
Net investment hedges	—	—	—	4,388	—	—
<b>Total assets</b>	<b>\$ 723</b>	<b>\$ 2,776</b>	<b>\$ —</b>	<b>\$ 4,388</b>	<b>\$ 200</b>	<b>\$ —</b>
<b>Accrued expenses:</b>						
Lead forward contracts	\$ 89	\$ —	\$ —	\$ —	\$ —	\$ —
Foreign currency forward contracts	—	—	—	—	—	512
<b>Other liabilities:</b>						
Interest rate swaps	1,162	—	—	—	—	—
Net investment hedges	—	—	15,760	4,090	—	—
<b>Total liabilities</b>	<b>\$ 1,251</b>	<b>\$ —</b>	<b>\$ 15,760</b>	<b>\$ 4,090</b>	<b>\$ —</b>	<b>\$ 512</b>

**The Effect of Derivative Instruments on the Consolidated Statements of Income**  
**For the fiscal year ended March 31, 2023**

	Pretax Gain (Loss) Recognized in AOCI on Derivative (Effective Portion)	Location of Gain (Loss) Reclassified from AOCI into Income (Effective Portion)	Pretax Gain (Loss) Reclassified from AOCI into Income (Effective Portion)
<b>Derivatives Designated as Cash Flow Hedges</b>			
Lead forward contracts	\$ (3,883)	Cost of goods sold	\$ (3,765)
Foreign currency forward contracts	1,849	Cost of goods sold	2,589
Interest Rate Swaps	(1,162)	Interest expense	—
<b>Total</b>	<b>\$ (3,196)</b>		<b>\$ (1,176)</b>
<b>Derivatives Designated as Net Investment Hedges</b>			
Cross currency fixed interest rate swaps	\$ 29,021	Interest expense	\$ 3,587
<b>Total</b>	<b>\$ 29,021</b>		<b>\$ 3,587</b>
<b>Derivatives Not Designated as Hedging Instruments</b>			
Foreign currency forward contracts		Other (income) expense, net	\$ 1,182
<b>Total</b>			<b>\$ 1,182</b>

**The Effect of Derivative Instruments on the Consolidated Statements of Income  
For the fiscal year ended March 31, 2022**

Derivatives Designated as Cash Flow Hedges	Pretax Gain (Loss) Recognized in AOCI on Derivative (Effective Portion)	Location of Gain (Loss) Reclassified from AOCI into Income (Effective Portion)	Pretax Gain (Loss) Reclassified from AOCI into Income (Effective Portion)
Lead forward contracts	\$ 12,193	Cost of goods sold	\$ 8,974
Foreign currency forward contracts	941	Cost of goods sold	768
Total	<u>\$ 13,134</u>		<u>\$ 9,742</u>

Derivatives Designated as Net Investment Hedges	Pretax Gain (Loss) Recognized in AOCI on Derivative (Effective Portion)	Location of Gain (Loss) Reclassified from AOCI into Income (Effective Portion)	Pretax Gain (Loss) Reclassified from AOCI into Income (Effective Portion)
Cross currency fixed interest rate swaps	\$ 1,479	Interest expense	\$ 1,181
Total	<u>\$ 1,479</u>		<u>\$ 1,181</u>

Derivatives Not Designated as Hedging Instruments		Location of Gain (Loss) Recognized in Income on Derivatives	Pretax Gain (Loss)
Foreign currency forward contracts		Other (income) expense, net	\$ (157)
Total			<u>\$ (157)</u>

**The Effect of Derivative Instruments on the Consolidated Statements of Income  
For the fiscal year ended March 31, 2021**

Derivatives Designated as Cash Flow Hedges	Pretax Gain (Loss) Recognized in AOCI on Derivative (Effective Portion)	Location of Gain (Loss) Reclassified from AOCI into Income (Effective Portion)	Pretax Gain (Loss) Reclassified from AOCI into Income (Effective Portion)
Lead forward contracts	\$ 202	Cost of goods sold	\$ (7,411)
Foreign currency forward contracts	130	Cost of goods sold	(492)
Total	<u>\$ 332</u>		<u>\$ (7,903)</u>

Derivatives Not Designated as Hedging Instruments		Location of Gain (Loss) Recognized in Income on Derivatives	Pretax Gain (Loss)
Foreign currency forward contracts		Other (income) expense, net	\$ 430
Total			<u>\$ 430</u>

**14. Income Taxes**

	Fiscal year ended March 31,		
	2023	2022	2021
<b>Current income tax expense</b>			
Current:			
Federal	\$ 21,203	\$ 9,558	\$ 12,591
State	5,654	4,022	4,133
Foreign	23,208	15,333	19,031
Total current income tax expense	50,065	28,913	35,755
<b>Deferred income tax (benefit) expense</b>			
Federal	(18,370)	1,183	1,495
State	(2,534)	(1,453)	735
Foreign	5,668	1,385	(11,224)
Total deferred income tax (benefit) expense	(15,236)	1,115	(8,994)
Total income tax expense	<u>\$ 34,829</u>	<u>\$ 30,028</u>	<u>\$ 26,761</u>

Earnings before income taxes consists of the following:

	Fiscal year ended March 31,		
	2023	2022	2021
United States	\$ 38,703	\$ 21,871	\$ 56,055
Foreign	171,936	152,068	114,080
Earnings before income taxes	<u>\$ 210,639</u>	<u>\$ 173,939</u>	<u>\$ 170,135</u>

Income taxes paid by the Company for the fiscal years ended March 31, 2023, 2022 and 2021 were \$46,309, \$50,484 and \$32,002, respectively.

On August 16, 2022, the Inflation Reduction Act of 2022 (“IRA”) was enacted. The IRA includes multiple incentives to promote clean energy, and energy storage manufacturing among other provisions with tax credits available from 2023 to 2032, subject to phase down beginning in 2030. In particular the IRA creates a refundable tax credit, pursuant to Section 45X of the Internal Revenue Code (“IRC”), for battery cells and battery modules manufactured or assembled in the United States and sold to third parties. In the period ended March 31, 2023, the IRA impact resulted in a reduction of our costs of goods sold and income tax payable. We will continue to evaluate the effects of IRA as more guidance is issued and the relevant implications to our consolidated financial statements.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was signed into law in the U.S. to provide certain relief as a result of the COVID-19 pandemic. In addition, governments around the world have enacted or implemented various forms of tax relief measures in response to the economic conditions in the wake of COVID-19. As of March 31, 2023, neither the CARES Act nor changes to income tax laws or regulations in other jurisdictions had a significant impact on the Company’s effective tax rate.

[Table of Contents](#)

The following table sets forth the tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities:

	March 31,	
	2023	2022
<b>Deferred tax assets:</b>		
Accounts receivable	\$ 219	\$ 481
Inventories	6,387	8,581
Net operating loss carryforwards	48,801	56,010
Lease liabilities	20,888	17,590
Capitalized R&D Expenditures	16,378	—
Accrued expenses	31,949	33,571
Other assets	22,029	19,941
Gross deferred tax assets	146,651	136,174
Less valuation allowance	(31,172)	(31,017)
Total deferred tax assets	115,479	105,157
<b>Deferred tax liabilities:</b>		
Property, plant and equipment	42,884	41,105
Lease Right-of-use assets	20,888	17,590
Intangible assets	59,152	60,827
Other liabilities	4,521	3,384
Total deferred tax liabilities	127,445	122,906
Net deferred tax liabilities	<u>\$ (11,966)</u>	<u>\$ (17,749)</u>

The Company has approximately \$719 in United States federal net operating loss carryforwards, all of which are limited by Section 382 of the Internal Revenue Code, with expirations between 2023 and 2027. The Company has approximately \$171,160 of foreign net operating loss carryforwards, of which \$136,800 may be carried forward indefinitely and \$34,360 expire between fiscal 2023 and fiscal 2041. In addition, the Company also has approximately \$22,936 of state net operating loss carryforwards with expirations between fiscal 2023 and fiscal 2042.

The following table sets forth the changes in the Company's valuation allowance for fiscal 2023, 2022 and 2021:

	Balance at Beginning of Period	Additions Charged to Expense	Valuation Allowance Reversal	Business Combination Adjustments	Other <sup>(1)</sup>	Balance at End of Period
Fiscal year ended March 31, 2021	\$ 20,951	\$ 8,437	\$ (2,904)	\$ 6,384	\$ (940)	\$ 31,928
Fiscal year ended March 31, 2022	31,928	4,486	(1,535)	—	(3,862)	31,017
Fiscal year ended March 31, 2023	31,017	2,654	(586)	—	(1,913)	31,172

(1) Includes the impact of currency changes and the expiration of net operating losses for which a full valuation allowance was recorded.

As of March 31, 2023 and 2022, the Company had no federal valuation allowance and the valuation allowance associated with the state tax jurisdictions was \$343 and \$686, respectively.

As of March 31, 2023 and 2022, the valuation allowance associated with certain foreign tax jurisdictions was \$30,829 and \$30,331, respectively. Of the net increase of \$155, \$2,068 was recorded as an increase to tax expense primarily related to deferred tax assets generated in the current year that the Company believes are not more likely than not to be realized, offset by \$(1,913) primarily related to foreign currency translation adjustments and expiration of foreign net operating losses for which a full valuation allowance was recorded.

[Table of Contents](#)

A reconciliation of income taxes at the statutory rate (21.0% for fiscal 2023, 2022 and 2021) to the income tax provision is as follows:

	Fiscal year ended March 31,		
	2023	2022	2021
United States statutory income tax expense	\$ 44,233	\$ 36,527	\$ 35,729
Increase (decrease) resulting from:			
State income taxes, net of federal effect	1,714	1,724	4,000
Nondeductible expenses and other	6,028	1,217	5,273
Net effect of GILTI, FDII, BEAT	2,457	5,405	1,985
Effect of foreign operations	(12,978)	(14,192)	(20,035)
Valuation allowance	2,068	2,951	5,533
Switzerland Tax Reform	—	—	(1,883)
Research and Development Credit	(5,063)	(3,604)	(3,841)
IRA Impact	(3,630)	—	—
Income tax expense	\$ 34,829	\$ 30,028	\$ 26,761

The effective income tax rates for the fiscal years ended March 31, 2023, 2022 and 2021 were 16.5%, 17.3% and 15.7%, respectively. The effective income tax rate with respect to any period may be volatile based on the mix of income in the tax jurisdictions in which the Company operates and the amount of its consolidated income before taxes. The rate decrease in fiscal 2023 compared to fiscal 2022 is primarily due to the impact of IRA offset by changes in mix of earnings among tax jurisdictions. The rate increase in fiscal 2022 compared to fiscal 2021 is primarily due to Swiss tax reform and changes in the mix of earnings among tax jurisdictions.

On May 19, 2019, a public referendum held in Switzerland approved the Federal Act on Tax Reform and AHV (Old-Age and Survivors Insurance) Financing (TRAF) as adopted by the Swiss Federal Parliament on September 28, 2018. The Swiss tax reform measures were effective January 1, 2020. The Company recorded a net deferred tax asset of \$22,500 during fiscal 2020, related to the amortizable goodwill and based on further evaluation with the Swiss tax authority, recorded an additional income tax benefit of \$1,883 during fiscal 2021.

In fiscal 2023, the foreign effective income tax rate on foreign pre-tax income of \$171,936 was 16.8%. In fiscal 2022, the foreign effective income tax rate on foreign pre-tax income of \$152,068 was 11.0% and in fiscal 2021, the foreign effective income tax rate on foreign pre-tax income of \$114,080 was 6.8%. The rate increase in fiscal 2023 compared to fiscal 2022 is primarily due to a reduction in favorable permanent items and changes in mix of earnings among tax jurisdictions. The rate increase in fiscal 2022 compared to fiscal 2021 is primarily due to Swiss tax reform and changes in the mix of earnings among tax jurisdictions.

Income from the Company's Swiss subsidiary comprised a substantial portion of its overall foreign mix of income for the fiscal years ended March 31, 2023, 2022 and 2021 and was taxed, excluding the impact from the Swiss tax reform, at approximately 7%, 4% and 8%, respectively.

The Company has approximately \$1,340,000 and \$1,180,000 of undistributed earnings of foreign subsidiaries for fiscal years 2023 and 2022, respectively. During fiscal 2023, previously undistributed earnings of certain foreign subsidiaries were no longer considered indefinitely reinvested, as a result, the Company recorded \$4,000 in additional income taxes. The Company intends to continue to be indefinitely reinvested on the remaining undistributed foreign earnings and outside basis differences and therefore, no additional income taxes have been provided.

## Uncertain Tax Positions

The following table summarizes activity of the total amounts of unrecognized tax benefits:

	Fiscal year ended March 31,		
	2023	2022	2021
Balance at beginning of year	\$ 4,770	\$ 6,785	\$ 7,795
Increases related to current year tax positions	24	21	346
Increases related to the Alpha acquisition	—	—	—
Increases related to prior year tax positions	(1)	598	325
Decreases related to prior tax positions	—	—	—
Decreases related to prior year tax positions settled	(77)	(784)	—
Lapse of statute of limitations	(1,221)	(1,850)	(1,681)
Balance at end of year	\$ 3,495	\$ 4,770	\$ 6,785

All of the balance of unrecognized tax benefits at March 31, 2023, if recognized, would be included in the Company's Consolidated Statements of Income and have a favorable impact on both the Company's net earnings and effective tax rate.

The Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction, and various states and foreign jurisdictions and is routinely subject to income tax examinations. As of March 31, 2022, the most significant tax examinations in process are the United States and Switzerland. The Company regularly assesses the likely outcomes of its tax audits and disputes to determine the appropriateness of its tax reserves. However, any tax authority could take a position on tax treatment that is contrary to the Company's expectations, which could result in tax liabilities in excess of reserves. With few exceptions, the Company is no longer subject to U.S. federal, state and local, or non-U.S. income tax examinations by tax authorities for years before 2009.

While the net effect on total unrecognized tax benefits cannot be reasonably estimated, approximately \$511 is expected to reverse in fiscal 2023 due to expiration of various statute of limitations.

The Company recognizes tax related interest and penalties in income tax expense in its Consolidated Statements of Income. As of March 31, 2023 and 2022, the Company had an accrual of \$435 and \$440, respectively, for interest and penalties.

## 15. Retirement Plans

### Defined Benefit Plans

The Company sponsors several retirement and pension plans covering eligible salaried and hourly employees. The Company uses a measurement date of March 31 for its pension plans.

Net periodic pension cost for fiscal 2023, 2022 and 2021, includes the following components:

	United States Plans			International Plans		
	Fiscal year ended March 31,			Fiscal year ended March 31,		
	2023	2022	2021	2023	2022	2021
Service cost	\$ —	\$ —	\$ —	\$ 918	\$ 1,114	\$ 993
Interest cost	582	517	533	1,715	1,427	1,388
Expected return on plan assets	(455)	(526)	(272)	(2,005)	(2,200)	(1,899)
Amortization and deferral	—	7	476	478	1,205	1,053
Net periodic benefit cost	\$ 127	\$ (2)	\$ 737	\$ 1,106	\$ 1,546	\$ 1,535

[Table of Contents](#)

The following table sets forth a reconciliation of the related benefit obligation, plan assets, and accrued benefit costs related to the pension benefits provided by the Company for those employees covered by defined benefit plans:

	United States Plans		International Plans	
	March 31,		March 31,	
	2023	2022	2023	2022
<b>Change in projected benefit obligation</b>				
Benefit obligation at the beginning of the period	\$ 16,205	\$ 17,806	\$ 70,833	\$ 83,252
Service cost	—	—	918	1,114
Interest cost	582	517	1,715	1,427
Benefits paid, inclusive of plan expenses	(843)	(802)	(2,052)	(2,328)
Plan curtailments and settlements	—	—	—	(141)
Actuarial (gains) losses	(1,888)	(1,316)	(15,995)	(8,545)
Foreign currency translation adjustment	—	—	(3,701)	(3,946)
Benefit obligation at the end of the period	<u>\$ 14,056</u>	<u>\$ 16,205</u>	<u>\$ 51,718</u>	<u>\$ 70,833</u>
<b>Change in plan assets</b>				
Fair value of plan assets at the beginning of the period	\$ 16,166	\$ 16,265	\$ 42,067	\$ 42,844
Actual return on plan assets	(1,348)	443	(3,722)	1,784
Employer contributions	—	260	6,428	1,979
Benefits paid, inclusive of plan expenses	(843)	(802)	(2,052)	(2,328)
Plan curtailments and settlements	—	—	—	(141)
Foreign currency translation adjustment	—	—	(2,617)	(2,071)
Fair value of plan assets at the end of the period	<u>\$ 13,975</u>	<u>\$ 16,166</u>	<u>\$ 40,104</u>	<u>\$ 42,067</u>
Funded status deficit	<u>\$ (81)</u>	<u>\$ (39)</u>	<u>\$ (11,614)</u>	<u>\$ (28,766)</u>
March 31,				
2023                  2022				
Amounts recognized in the Consolidated Balance Sheets consist of:				
Non-current assets	\$ 14,147	\$ 1,055		
Accrued expenses	(1,314)	(1,294)		
Other liabilities	(24,528)	(28,566)		
Funded status deficit	<u>\$ (11,695)</u>	<u>\$ (28,805)</u>		

The following table represents pension components (before tax) and related changes (before tax) recognized in AOCI for the Company's pension plans for the years ended March 31, 2023, 2022 and 2021:

	Fiscal year ended March 31,		
	2023	2022	2021
<b>Amounts recorded in AOCI before taxes:</b>			
Prior service cost	\$ (128)	\$ (174)	\$ (230)
Net loss	(2,307)	(14,049)	(25,450)
Net amount recognized	<u>\$ (2,435)</u>	<u>\$ (14,223)</u>	<u>\$ (25,680)</u>

[Table of Contents](#)

The following table represents changes in plan assets and benefit obligations recognized in AOCI for the Company's pension plans for the years ended March 31, 2023, 2022 and 2021:

	Fiscal year ended March 31,		
	2023	2022	2021
<b>Changes in plan assets and benefit obligations:</b>			
New prior service cost	\$ —	\$ —	\$ —
Net loss (gain) arising during the year	(10,352)	(9,362)	(753)
Effect of exchange rates on amounts included in AOCI	(957)	(883)	1,909
<b>Amounts recognized as a component of net periodic benefit costs:</b>			
Amortization of prior service cost	(41)	(45)	(46)
Amortization or settlement recognition of net loss	(438)	(1,167)	(1,484)
Total recognized in other comprehensive (income) loss	\$ (11,788)	\$ (11,457)	\$ (374)

The amounts included in AOCI as of March 31, 2023 that are expected to be recognized as components of net periodic pension cost (before tax) during the next twelve months are as follows:

Prior service cost	\$ (43)
Net loss	(69)
Net amount expected to be recognized	\$ (112)

The accumulated benefit obligation related to all defined benefit pension plans and information related to unfunded and underfunded defined benefit pension plans at the end of each fiscal year are as follows:

	United States Plans		International Plans	
	March 31,		March 31,	
	2023	2022	2023	2022
<b>All defined benefit plans:</b>				
Accumulated benefit obligation	\$ 14,056	\$ 16,205	\$ 49,290	\$ 67,301
<b>Unfunded defined benefit plans:</b>				
Projected benefit obligation	\$ —	\$ —	\$ 25,562	\$ 29,570
Accumulated benefit obligation	—	—	23,704	27,156
<b>Defined benefit plans with a projected benefit obligation in excess of the fair value of plan assets:</b>				
Projected benefit obligation	\$ 11,671	\$ 5,479	\$ 25,908	\$ 29,570
Fair value of plan assets	11,403	5,188	335	—
<b>Defined benefit plans with an accumulated benefit obligation in excess of the fair value of plan assets:</b>				
Projected benefit obligation	\$ 11,671	\$ 5,479	\$ 25,562	\$ 29,570
Accumulated benefit obligation	11,671	5,479	23,704	27,156
Fair value of plan assets	11,403	5,188	—	—

## Assumptions

Significant assumptions used to determine the net periodic benefit cost for the U.S. and International plans were as follows:

	United States Plans			International Plans		
	Fiscal year ended March 31,			Fiscal year ended March 31,		
	2023	2022	2021	2023	2022	2021
Discount rate	3.7 %	3.0 %	3.0 %	1.5%-5.4%	0.5%-2.3%	1.3%-2.3%
Expected return on plan assets	5.5	5.5	6.0	3.1-5.3	2.7-5.3	3.8-5.5
Rate of compensation increase	N/A	N/A	N/A	1.8-5.5	1.5-4.0	2.0-3.5

N/A = not applicable

Significant assumptions used to determine the projected benefit obligations for the U.S. and International plans were as follows:

	United States Plans		International Plans	
	March 31,		March 31,	
	2023	2022	2023	2022
Discount rate	4.9 %	3.7 %	3.5%-6%	1.5%-5.4%
Rate of compensation increase	N/A	N/A	2.3-4.5	1.8-5.5

N/A = not applicable

The United States plans do not include compensation in the formula for determining the pension benefit as it is based solely on years of service.

The expected long-term rate of return for the Company's pension plan assets is based upon the target asset allocation and is determined using forward looking assumptions in the context of historical returns and volatilities for each asset class, as well as correlations among asset classes. The Company evaluates the rate of return assumptions for each of its plans on an annual basis.

## Pension Plan Investment Strategy

The Company's investment policy emphasizes a balanced approach to investing in securities of high quality and ready marketability. Investment flexibility is encouraged so as not to exclude opportunities available through a diversified investment strategy.

Equity investments are maintained within a target range of 40% - 75% of the total portfolio market value for the U.S. plans and with a target of approximately 65% for international plans. The investment strategy for the UK plan has been updated this year to reflect a de-risking exercise that occurred where the UK plan moved from 65%/35% equity/bonds to 100% bonds. Investments in debt securities include issues of various maturities, and the average quality rating of bonds should be investment grade with a minimum quality rating of "B" at the time of purchase.

The Company periodically reviews the asset allocation of its portfolio. The proportion committed to equities, debt securities and cash and cash equivalents is a function of the values available in each category and risk considerations. The plan's overall return will be compared to and is expected to meet or exceed established benchmark funds and returns over a three to five year period.

The objectives of the Company's investment strategies are: (a) the achievement of a reasonable long-term rate of total return consistent with an emphasis on preservation of capital and purchasing power, (b) stability of annual returns through a portfolio that reflects a conservative mix of risk versus return, and (c) reflective of the Company's willingness to forgo significantly above-average rewards in order to minimize above-average risks. These objectives may not be met each year but should be attained over a reasonable period of time.

[Table of Contents](#)

The following table represents the Company's pension plan investments measured at fair value as of March 31, 2023 and 2022 and the basis for that measurement:

											March 31, 2023			
											United States Plans			
											Total Fair Value Measurement	Quoted Price In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Asset category:														
Cash and cash equivalents	\$ 1,714	\$ 1,714	\$ —	\$ —	\$ —	\$ 7,775	\$ 7,775	\$ —	\$ —	\$ —				
Equity securities														
US <sup>(a)</sup>	8,308	8,308	—	—	—	—	—	—	—	—				
International <sup>(b)</sup>	—	—	—	—	—	—	—	—	—	—				
Fixed income <sup>(c)</sup>	3,953	3,953	—	—	—	32,329	—	—	—	—		32,329	—	
<b>Total</b>	<b>\$ 13,975</b>	<b>\$ 13,975</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 40,104</b>	<b>\$ 7,775</b>	<b>\$ 32,329</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>				

											March 31, 2022			
											United States Plans			
											Total Fair Value Measurement	Quoted Price In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Asset category:														
Cash and cash equivalents	\$ 1,576	\$ 1,576	\$ —	\$ —	\$ 98	\$ 98	\$ —	\$ —	\$ —	\$ —				
Equity securities														
US <sup>(a)</sup>	10,350	10,350	—	—	—	—	—	—	—	—				
International <sup>(b)</sup>	—	—	—	—	28,296	—	—	—	—	28,296				
Fixed income <sup>(c)</sup>	4,240	4,240	—	—	13,673	—	—	—	—	13,673				
<b>Total</b>	<b>\$ 16,166</b>	<b>\$ 16,166</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 42,067</b>	<b>\$ 98</b>	<b>\$ 41,969</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>				

The fair values presented above were determined based on valuation techniques to measure fair value as discussed in Note 1.

- (a) US equities include companies that are well diversified by industry sector and equity style (i.e., growth and value strategies). Active and passive management strategies are employed. Investments are primarily in large capitalization stocks and, to a lesser extent, mid- and small-cap stocks.
- (b) International equities are invested in companies that are traded on exchanges outside the U.S. and are well diversified by industry sector, country and equity style. Active and passive strategies are employed. The vast majority of the investments are made in companies in developed markets with a small percentage in emerging markets.
- (c) Fixed income consists primarily of investment grade bonds from diversified industries.

The Company expects to make cash contributions of approximately \$1,717 to its pension plans in fiscal 2024.

Estimated future benefit payments under the Company's pension plans are as follows:

2024	\$ 3,037
2025	3,203
2026	3,427
2027	3,874
2028	4,634
Years 2029-2033	22,093

**Defined Contribution Plan**

The Company maintains defined contribution plans primarily in the U.S. and U.K. Eligible employees can contribute a portion of their pre-tax and / or after-tax income in accordance with plan guidelines and the Company will make contributions based on the employees' eligible pay and /or will match a percentage of the employee contributions up to certain limits. Matching contributions charged to expense for the fiscal years ended March 31, 2023, 2022 and 2021 were \$20,993, \$18,402 and \$16,460, respectively.

**16. Stockholders' Equity***Preferred Stock and Common Stock*

The Company's certificate of incorporation authorizes the issuance of up to 1,000,000 shares of preferred stock, par value \$0.01 per share ("Preferred Stock"). At March 31, 2023 and 2022, no shares of Preferred Stock were issued or outstanding. The Board of Directors of the Company has the authority to specify the terms of any Preferred Stock at the time of issuance.

The following demonstrates the change in the number of shares of common stock outstanding during fiscal years ended March 31, 2021, 2022 and 2023, respectively:

Shares outstanding as of March 31, 2020	42,323,305
Purchase of treasury stock	—
Shares issued towards equity-based compensation plans, net of equity awards surrendered for option price and taxes	429,715
Shares outstanding as of March 31, 2021	42,753,020
Purchase of treasury stock	(1,996,334)
Shares issued under equity-based compensation plans, net of equity awards surrendered for option price and taxes	229,972
Shares outstanding as of March 31, 2022	40,986,658
Purchase of treasury stock	(358,365)
Shares issued under equity-based compensation plans, net of equity awards surrendered for option price and taxes	272,766
Shares outstanding as of March 31, 2023	<u><u>40,901,059</u></u>

*Treasury Stock*

In fiscal 2023, the Company purchased 358,365 shares for \$22,907. The Company purchased 1,996,334 shares for \$156,366 in fiscal 2022 but did not purchase any shares in fiscal 2021. At March 31, 2023 and 2022, the Company held 15,103,554 and 14,762,266 shares as treasury stock, respectively.

*Treasury Stock Reissuance*

During fiscal 2023, fiscal 2022 and fiscal 2021, the Company also issued 17,077, 13,858 and 13,465 shares out of its treasury stock, respectively, valued at \$62.55 per share, on a LIFO basis, to participants under the Company's Employee Stock Purchase Plan.

*Accumulated Other Comprehensive Income (“AOCI”)*

The components of AOCI, net of tax, are as follows:

	Beginning Balance	Before Reclassifications	Amount Reclassified from AOCI	Ending Balance
<b>March 31, 2023</b>				
Pension funded status adjustment	\$ (12,637)	\$ 7,872	\$ 342	\$ (4,423)
Net unrealized gain (loss) on derivative instruments	2,963	(2,453)	901	1,411
Foreign currency translation adjustment <sup>(1)</sup>	(133,821)	(46,641)	—	(180,462)
Accumulated other comprehensive loss	<u>\$ (143,495)</u>	<u>\$ (41,222)</u>	<u>\$ 1,243</u>	<u>\$ (183,474)</u>
<b>March 31, 2022</b>				
Pension funded status adjustment	\$ (20,947)	\$ 7,374	\$ 936	\$ (12,637)
Net unrealized gain (loss) on derivative instruments	360	10,063	(7,460)	2,963
Foreign currency translation adjustment	(95,296)	(38,525)	—	(133,821)
Accumulated other comprehensive loss	<u>\$ (115,883)</u>	<u>\$ (21,088)</u>	<u>\$ (6,524)</u>	<u>\$ (143,495)</u>
<b>March 31, 2021</b>				
Pension funded status adjustment	\$ (22,794)	\$ 680	\$ 1,167	\$ (20,947)
Net unrealized gain (loss) on derivative instruments	(5,923)	250	6,033	360
Foreign currency translation adjustment	(186,289)	90,993	—	(95,296)
Accumulated other comprehensive loss	<u>\$ (215,006)</u>	<u>\$ 91,923</u>	<u>\$ 7,200</u>	<u>\$ (115,883)</u>

(1) Foreign currency translation adjustment for the fiscal year ended March 31, 2023 and March 31, 2022 includes a \$19,491 gain (net of taxes of \$4,557) and \$228 gain (net of taxes \$70), respectively, related to the Company's \$300,000 and \$150,000 cross-currency fixed interest rate swap contracts.

The following table presents reclassifications from AOCI during the twelve months ended March 31, 2023:

Components of AOCI	Amounts Reclassified from AOCI	Location of (Gain) Loss Recognized on Income Statement
<b>Derivatives in Cash Flow Hedging Relationships:</b>		
Net unrealized loss on derivative instruments	\$ 1,176	Cost of goods sold
Tax benefit	<u>(275)</u>	
Net unrealized loss on derivative instruments, net of tax	<u>\$ 901</u>	
<b>Derivatives in net investment hedging relationships:</b>		
Net unrealized gain on derivative instruments	\$ (3,587)	Interest expense
Tax expense	<u>839</u>	
Net unrealized gain on derivative instruments, net of tax	<u>\$ (2,748)</u>	
<b>Defined benefit pension costs:</b>		
Prior service costs and deferrals	\$ 478	Net periodic benefit cost, included in other (income) expense, net - See Note 15
Tax benefit	<u>(136)</u>	
Net periodic benefit cost, net of tax	<u>\$ 342</u>	

[Table of Contents](#)

The following table presents reclassifications from AOCI during the twelve months ended March 31, 2022:

Components of AOCI	Amounts Reclassified from AOCI	Location of (Gain) Loss Recognized on Income Statement
<b>Derivatives in Cash Flow Hedging Relationships:</b>		
Net unrealized gain on derivative instruments	\$ (9,742)	Cost of goods sold
Tax benefit	<u>2,282</u>	
Net unrealized loss on derivative instruments, net of tax	<u><u>(7,460)</u></u>	
<b>Derivatives in net investment hedging relationships:</b>		
Net unrealized gain on derivative instruments	\$ (1,181)	Interest expense
Tax expense	<u>276</u>	
Net unrealized gain on derivative instruments, net of tax	<u><u>(905)</u></u>	
<b>Defined benefit pension costs:</b>		
Prior service costs and deferrals	\$ 1,212	Net periodic benefit cost, included in other (income) expense, net - See Note 15
Tax benefit	<u>(276)</u>	
Net periodic benefit cost, net of tax	<u><u>936</u></u>	

The following table presents reclassifications from AOCI during the twelve months ended March 31, 2021:

Components of AOCI	Amounts Reclassified from AOCI	Location of (Gain) Loss Recognized on Income Statement
<b>Derivatives in Cash Flow Hedging Relationships:</b>		
Net unrealized loss on derivative instruments	\$ 7,903	Cost of goods sold
Tax benefit	<u>(1,870)</u>	
Net unrealized loss on derivative instruments, net of tax	<u><u>6,033</u></u>	
<b>Defined benefit pension costs:</b>		
Prior service costs and deferrals	\$ 1,529	Net periodic benefit cost, included in other (income) expense, net - See Note 15
Tax benefit	<u>(362)</u>	
Net periodic benefit cost, net of tax	<u><u>1,167</u></u>	

## 17. Stock-Based Compensation

As of March 31, 2023, the Company maintains the 2017 Equity Incentive Plan (“2017 EIP”). The 2017 EIP reserved 4,173,554 shares of common stock for the grant of various classes of nonqualified stock options, restricted stock units, market condition-based on total shareholder return (“TSR”) and performance condition-based share units (“PSU”) and other forms of equity-based compensation. Shares subject to any awards that expire without being exercised or that are forfeited or settled in cash shall again be available for future grants of awards under the 2017 EIP. Shares subject to stock option or stock appreciation right awards, that have been retained by the Company in payment or satisfaction of the exercise price and any applicable tax withholding obligation of such awards, shall not be available for future grant under the 2017 EIP.

As of March 31, 2023, 2,221,003 shares are available for future grants. The Company’s management equity incentive plans are intended to provide an incentive to employees and non-employee directors of the Company to remain in the service of the Company and to increase their interest in the success of the Company in order to promote the long-term interests of the

Company. The plans seek to promote the highest level of performance by providing an economic interest in the long-term performance of the Company. The Company settles employee share-based compensation awards with newly issued shares.

### Stock Options

During fiscal 2023, the Company granted to management and other key employees 310,140 non-qualified options that vest ratably over 3 years from the date of grant. Options expire 10 years from the date of grant.

The Company recognized stock-based compensation expense relating to stock options of \$6,232, with a related tax benefit of \$848 for fiscal 2023, \$6,235 with a related tax benefit of \$738 for fiscal 2022 and \$3,514 with a related tax benefit of \$368 for fiscal 2021.

For purposes of determining the fair value of stock options granted, the Company used a Black-Scholes Model with the following assumptions:

	2023	2022	2021
Risk-free interest rate	2.92 %	0.89 %	0.39 %
Dividend yield	0.99 %	0.76 %	0.93 %
Expected life (years)	6	6	6
Volatility	37.4 %	37.3 %	37.2 %

The following table summarizes the Company's stock option activity in the years indicated:

	Number of Options	Weighted-Average Remaining Contract Term (Years)	Weighted-Average Exercise Price	Aggregate Intrinsic Value
Options outstanding as of March 31, 2020	791,582	7.8	\$ 67.55	\$ —
Granted	295,068	—	79.62	—
Exercised	(247,975)	—	66.11	6,382
Forfeited	(34,854)	—	69.20	290
Expired	(4,320)	—	80.25	—
Options outstanding as of March 31, 2021	799,501	7.8	\$ 72.31	\$ 14,781
Granted	246,222	—	97.32	—
Exercised	(42,640)	—	65.71	1,079
Forfeited	(27,478)	—	71.26	520
Expired	—	—	—	—
Options outstanding as of March 31, 2022	975,605	7.5	\$ 78.94	\$ 3,605
Granted	310,140	—	75.33	—
Exercised	(75,180)	—	65.22	1,561
Forfeited	(9,575)	—	80.05	39
Expired	(4,679)	—	85.12	—
Options outstanding as of March 31, 2023	<u>1,196,311</u>	<u>7.3</u>	<u>\$ 78.83</u>	<u>\$ 12,150</u>
Options exercisable as of March 31, 2023	<u>643,454</u>	<u>6.0</u>	<u>\$ 75.74</u>	<u>\$ 8,015</u>
Options vested and expected to vest, as of March 31, 2023	<u>1,178,740</u>	<u>7.3</u>	<u>\$ 78.80</u>	<u>\$ 12,000</u>

The following table summarizes information regarding stock options outstanding as of March 31, 2023:

Range of Exercise Prices	Number of Options	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
\$57.60-\$60.00	160,227	5.9	\$ 57.73
\$60.01-\$70.00	32,500	1.9	\$ 68.69
\$70.01-\$80.00	510,031	8.1	\$ 75.33
\$80.01-\$90.00	256,634	6.2	\$ 83.00
\$90.01-\$100.99	236,919	8.4	\$ 97.54
	<u>1,196,311</u>	<u>7.3</u>	<u>\$ 78.83</u>

#### **Restricted Stock Units, Market and Performance-condition based Awards**

##### *Non-Employee Directors*

In fiscal 2023, the Company granted to non-employee directors 39,792 deferred restricted stock units (“DSU”) at the fair value of \$42.95 per restricted stock unit at the date of grant. In fiscal 2022, such grants amounted to 24,055 restricted stock units at the fair value of \$60.29 per restricted stock unit at the date of grant and in fiscal 2021, such grants amounted to 39,726 restricted stock units at the fair value of \$39.93 per restricted stock unit at the date of grant. The awards vest immediately upon the date of grant and are settled in shares of common stock six months after termination of service as a director.

The Company also granted to non-employee directors, during fiscal 2023, fiscal 2022 and fiscal 2021, 1,635, 781, and 1,435 restricted stock units, respectively, at fair values of \$66.90, \$88.27 and \$71.53, respectively, under the deferred compensation plan for non-employee directors.

##### *Employees*

In fiscal 2023, the Company granted to management and other key employees 345,449 restricted stock units that vest ratably over four years from the date of grant, at the fair value of \$70.88 per restricted stock unit.

In fiscal 2022, the Company granted to management and other key employees 229,600 restricted stock units that vest ratably over four years from the date of grant at the fair value of \$91.81 per restricted stock unit.

In fiscal 2021, the Company granted to management and other key employees 283,101 restricted stock units that vest ratably over four years from the date of grant at a fair value of \$75.39 per restricted stock unit.

A summary of the changes in restricted stock units, TSRs and PSUs awarded to employees and directors that were outstanding under the Company’s equity compensation plans during fiscal 2023 is presented below:

	Restricted Stock Units (RSU)		Market condition-based Share Units (TSR)		Performance condition-based Share Units (PSU)	
	Number of RSU	Weighted-Average Grant Date Fair Value	Number of TSR	Weighted-Average Grant Date Fair Value	Number of PSU	Weighted-Average Grant Date
Non-vested awards as of March 31, 2022	877,765	\$ 65.48	74,983	\$ 71.25	76,873	\$ 55.56
Granted	386,876	66.90	—	—	—	—
Stock dividend	9,982	64.20	454	66.61	227	55.56
Performance factor	—	—	—	—	—	—
Vested	(230,427)	73.71	(29,171)	85.62	(21,195)	68.48
Forfeitures	(34,413)	76.08	(14,613)	62.02	(55,905)	50.67
Non-vested awards as of March 31, 2023	<u>1,009,783</u>	<u>\$ 65.48</u>	<u>31,653</u>	<u>\$ 62.19</u>	<u>—</u>	<u>\$ —</u>

The Company recognized stock-based compensation expense relating to restricted stock units, TSRs and PSUs of \$20,139, with a related tax benefit of \$3,746 for fiscal 2023, \$18,054, with a related tax benefit of \$3,072 for fiscal 2022 and \$16,303, with a related tax benefit of \$2,121 for fiscal 2021.

#### All Award Plans

As of March 31, 2023, unrecognized compensation expense associated with the non-vested equity awards outstanding was \$53,157 and is expected to be recognized over a weighted-average period of 24 months.

#### 18. Earnings Per Share

The following table sets forth the reconciliation from basic to diluted weighted-average number of common shares outstanding and the calculations of net earnings per common share attributable to EnerSys stockholders.

	Fiscal year ended March 31,		
	2023	2022	2021
Net earnings attributable to EnerSys stockholders	\$ 175,810	\$ 143,911	\$ 143,374
Weighted-average number of common shares outstanding:			
Basic	40,809,235	42,106,337	42,548,449
Dilutive effect of:			
Common shares from exercise and lapse of equity awards, net of shares assumed reacquired	517,520	677,036	675,954
Diluted weighted-average number of common shares outstanding	41,326,755	42,783,373	43,224,403
Basic earnings per common share attributable to EnerSys stockholders	\$ 4.31	\$ 3.42	\$ 3.37
Diluted earnings per common share attributable to EnerSys stockholders	\$ 4.25	\$ 3.36	\$ 3.32
Anti-dilutive equity awards not included in diluted weighted-average common shares	710,678	951,057	281,483

#### 19. Commitments, Contingencies and Litigation

##### Litigation and Other Legal Matters

In the ordinary course of business, the Company and its subsidiaries are routinely defendants in or parties to pending and threatened legal actions and proceedings, including actions brought on behalf of various classes of claimants. These actions and proceedings are generally based on alleged violations of environmental, anti-competition, employment, contract and other laws. In some of these actions and proceedings, claims for substantial monetary damages are asserted against the Company and its subsidiaries. In the ordinary course of business, the Company and its subsidiaries are also subject to regulatory and governmental examinations, information gathering requests, inquiries, investigations, and threatened legal actions and proceedings. In connection with formal and informal inquiries by federal, state, local and foreign agencies, the Company and its subsidiaries receive numerous requests, subpoenas and orders for documents, testimony and information in connection with various aspects of their activities.

##### European Competition Investigations

Certain of the Company's European subsidiaries had received subpoenas and requests for documents and, in some cases, interviews from, and have had on-site inspections conducted by the competition authorities of Belgium, Germany and the Netherlands relating to conduct and anticompetitive practices of certain industrial battery participants. As of March 31, 2023 and March 31, 2022, the Company did not have a reserve balance related to these matters.

The precise scope, timing and time period at issue, as well as the final outcome of the investigations or customer claims, remain uncertain. Accordingly, the Company's estimate may change from time to time, and actual losses could vary.

## *Environmental Issues*

As a result of its operations, the Company is subject to various federal, state and local, as well as international environmental laws and regulations and is exposed to the costs and risks of registering, handling, processing, storing, transporting, and disposing of hazardous substances, especially lead and acid. The Company's operations are also subject to federal, state, local and international occupational safety and health regulations, including laws and regulations relating to exposure to lead in the workplace. The Company believes that it has adequate reserves to satisfy its environmental liabilities.

## *Collective Bargaining*

At March 31, 2023, the Company had approximately 11,350 employees. Of these employees, approximately 26% were covered by collective bargaining agreements. Employees covered by collective bargaining agreements that expire in the next twelve months were approximately 9% of the total workforce. The average term of these agreements is 2 years, with the longest term being 4.0 years. The Company considers its employee relations to be good and did not experience any significant labor unrest or disruption of production during fiscal 2023.

## *Lead, Foreign Currency Forward Contracts and Swaps*

To stabilize its lead costs and reduce volatility from currency movements, the Company enters into contracts with financial institutions. The vast majority of such contracts are for a period not extending beyond one year. The Company also entered into cross currency fixed interest rate swap agreements to hedge its net investments in foreign operations against future volatility in the exchange rates between U.S. Dollars and Euros and these agreements mature on December 15, 2027. Please refer to Note 13 - Derivative Financial Instruments for more details.

## *Other*

The Company has various purchase and capital commitments incidental to the ordinary conduct of business. In the aggregate, such commitments are not at prices in excess of current market.

## **20. Restructuring, Exit and Other Charges**

### *Restructuring Programs*

#### *Fiscal 2023*

The Company had committed to various restructuring plans aimed at improving operational efficiencies across its lines of business. A substantial portion of these plans are complete, with an estimated \$445 remaining to be incurred by the end of fiscal 2023, mainly related to plans started in fiscal 2021 and fiscal 2022. Restructuring and exit charges for the reportable segments are as follows:

During fiscal 2023, the Company recorded charges related to our fiscal 2022 programs in the Energy Systems segment to improve operational efficiencies. The charges related to severance payments and amounted to \$1,230 to approximately 9 employees in the Energy Systems' segment.

During fiscal 2022, the Company announced and completed restructuring programs in the Energy Systems segment to improve operational efficiencies. The charges related to severance payments and amounted to \$1,284 to approximately 10 employees in the Energy Systems' segment.

During fiscal 2021, the Company announced restructuring programs in the Energy Systems segment relating to its recent acquisitions of Alpha and NorthStar, as part of its targeted synergy plans. The Company also announced a restructuring program to improve global operational efficiencies in its Motive Power segment. The charges, in both segments were primarily cash charges relating to severance payments and amounted to \$3,187 to approximately 47 employees in the Energy Systems segment and \$4,012 to approximately 32 employees in the Motive Power segment. In addition there was a \$169 charge related to the Specialty segment.

[Table of Contents](#)

Restructuring and exit charges for fiscal 2023, 2022 and 2021 by reportable segments are as follows:

	Fiscal year ended March 31, 2023			
	Energy Systems	Motive Power	Specialty	Total
Restructuring charges	\$ 1,318	\$ 327	\$ 42	\$ 1,687
Exit charges	123	12,537	2,092	14,752
Restructuring and other exit charges	<u>\$ 1,441</u>	<u>\$ 12,864</u>	<u>\$ 2,134</u>	<u>\$ 16,439</u>

	Fiscal year ended March 31, 2022			
	Energy Systems	Motive Power	Specialty	Total
Restructuring charges	\$ 2,005	\$ 2,348	\$ 75	\$ 4,428
Exit charges	708	14,711	(1,091)	14,328
Restructuring and other exit charges	<u>\$ 2,713</u>	<u>\$ 17,059</u>	<u>\$ (1,016)</u>	<u>\$ 18,756</u>

	Fiscal year ended March 31, 2021			
	Energy Systems	Motive Power	Specialty	Total
Restructuring charges	\$ 3,187	\$ 4,012	\$ 169	\$ 7,368
Exit charges	—	32,786	220	33,006
Restructuring and other exit charges	<u>\$ 3,187</u>	<u>\$ 36,798</u>	<u>\$ 389</u>	<u>\$ 40,374</u>

A roll-forward of the restructuring reserve is as follows:

	Employee Severance	Other	Total
Balance at March 31, 2020	\$ 3,325	\$ —	\$ 3,325
Accrued	6,537	831	7,368
Costs incurred	(7,550)	(831)	(8,381)
Foreign currency impact and other	283	—	283
Balance at March 31, 2021	<u>\$ 2,595</u>	<u>\$ —</u>	<u>\$ 2,595</u>
Accrued	4,428	—	4,428
Costs incurred	(6,013)	—	(6,013)
Foreign currency impact and other	20	—	20
Balance at March 31, 2022	<u>\$ 1,030</u>	<u>\$ —</u>	<u>\$ 1,030</u>
Accrued	1,687	—	1,687
Costs incurred	(2,224)	—	(2,224)
Foreign currency impact and other	(48)	—	(48)
Balance at March 31, 2023	<u>\$ 445</u>	<u>\$ —</u>	<u>\$ 445</u>

*Exit Charges*

*Fiscal 2023 Programs*

*Sylmar*

In November 2022, the Company committed to a plan to close its facility in Sylmar, California, which manufactures specialty lithium batteries for aerospace and medical applications. Management determined to close the site upon the expiration of its lease on the property and to redirect production through consolidation into existing locations. The Company currently estimates total charges in the exit to amount to \$5,528. Cash charges are estimated to total \$4,413 primarily relating to severance and other costs to leave the site. Non-cash charges are estimated to be \$1,115 relating to fixed assets, inventory, and contract assets. The plan is expected to be completed in fiscal 2024.

During fiscal 2023, the Company recorded cash charges of \$1,682 related primarily to severance costs and non-cash charges totaling \$417 primarily relating to contract assets.

*Ooltewah*

On June 29, 2022, the Company committed to a plan to close its facility in Ooltewah, Tennessee, which produced flooded motive power batteries for electric forklifts. Management determined that future demand for traditional motive power flooded cells will decrease as customers transition to maintenance free product solutions in lithium and TPPL. The Company currently estimates that the total charges for these actions will amount to approximately \$18,500. Cash charges for employee severance related payments, cleanup related to the facility, contractual releases and legal expenses are estimated to be \$9,200 and non-cash charges from inventory and fixed asset write-offs are estimated to be \$9,300. These actions will result in the reduction of approximately 165 employees. The plan is expected to be completed in calendar 2023.

During fiscal 2023, the Company recorded cash charges relating to severance and manufacturing variances of \$2,735 and non-cash charges of \$7,261 relating to fixed asset write-offs. The Company also recorded a non-cash write off relating to inventories of \$1,613, which was reported in cost of goods sold.

*Fiscal 2022 Programs*

*Russia*

In February 2022, as a result of the Russia-Ukraine conflict, economic sanctions were imposed on Russian individuals and entities, including financial institutions, by countries around the world, including the U.S. and the European Union. On March 3, 2022, the Company announced that it was indefinitely suspending its operations in Russia in order to comply with the sanctions. As a result of this decision, the Company wrote off net assets of \$3,999 relating to its Russian subsidiary. The Company also incurred cash charges of \$1,284 relating to severance and exiting lease obligations. During fiscal 2023, the Company sold inventory previously written off resulting in the reversal of \$932 in cost of goods sold and reversal of \$739 of cash charges primarily relating to lease obligations.

*Zamudio, Spain*

During fiscal 2022, the Company closed a minor assembling plant in Zamudio, Spain and sold the same for \$1,779. A net gain of \$740 was recorded as a credit to exit charges in the Consolidated Statements of Income.

*Fiscal 2021 Programs*

*Hagen, Germany*

In fiscal 2021, the Company's Board of Directors approved a plan to substantially close all of its facility in Hagen, Germany, which produces flooded motive power batteries for forklifts. Management determined that future demand for the motive power batteries produced at this facility was not sufficient, given the conversion from flooded to maintenance free batteries by customers, the existing number of competitors in the market, as well as the near term decline in demand and increased uncertainty from the pandemic. The Company plans to retain the facility with limited sales, service and administrative functions along with related personnel for the foreseeable future.

The Company currently estimates that the total charges for these actions will amount to approximately \$60,000, the majority of which has been recorded as of March 31, 2022. Cash charges for employee severance related payments, cleanup related to the

facility, contractual releases and legal expenses are estimated to be \$40,000 and non-cash charges from inventory and equipment write-offs are estimated to be \$20,000. These actions resulted in the reduction of approximately 200 employees.

During fiscal 2021, the Company recorded cash charges relating to severance of \$23,331 and non-cash charges of \$7,946 primarily relating to fixed asset write-offs.

During fiscal 2022, the Company recorded cash charges primarily relating to severance of \$8,069 and non-cash charges of \$3,522 primarily relating to fixed asset write-offs. The Company also recorded a non-cash write off relating to inventories of \$960, which was reported in cost of goods sold.

During fiscal 2023, the Company recorded cash charges of \$2,207 relating to primarily to site cleanup and \$562 of non-cash charges relating to accelerated depreciation of fixed assets.

#### *Vijayawada, India*

During fiscal 2021, the Company committed to a plan to close its facility in Vijayawada, India to align with its strategic vision for the new line of business structure and footprint and recorded exit charges of \$1,509, primarily relating to asset write-offs. In fiscal 2022, the Company reclassified property, plant and equipment with a carrying value of \$4,573 to assets held for sale on the Consolidated Balance Sheet and recognized an impairment loss of \$2,973 under the caption *Loss on assets held for sale* on its consolidated statement of income, by writing down the carrying value of these assets to their estimated fair value of \$1,600, based on their expected proceeds, less costs to sell. The Company also recorded a non-cash write off relating to inventories of \$820, which was reported in cost of goods sold.

#### *Targovishte, Bulgaria*

During fiscal 2019, the Company committed to a plan to close its facility in Targovishte, Bulgaria, which produced diesel-electric submarine batteries. Management determined that the future demand for batteries of diesel-electric submarines was not sufficient given the number of competitors in the market. Of the estimated total charges of \$26,000 for this plan, the Company had recorded charges amounting to \$20,242 in fiscal 2019, relating to severance and inventory and fixed asset write-offs and an additional \$5,123 relating to cash and non-cash charges during fiscal 2020. During fiscal 2021, in keeping with its strategy of exiting the manufacture of batteries for diesel-electric submarines, the Company completed further actions which resulted in \$220 relating to cash and non-cash charges. During fiscal 2022, the Company sold this facility for \$1,489. A net gain of \$1,208 was recorded as a credit to exit charges in the Consolidated Statements of Income.

#### *Fiscal 2020 Programs*

##### *Richmond, Kentucky Plant Fire*

During fiscal 2021, the Company settled its claims with its insurance carrier relating to the fire that broke out in the battery formation area of the Company's Richmond, Kentucky motive power production facility in fiscal 2020. The total claims, for both property and business interruption of \$46,117 were received through March 31, 2021.

The final settlement of insurance recoveries and finalization of costs related to the replacement of property, plant and equipment, resulted in a net gain of \$4,397, which was recorded as a reduction to operating expenses in the Consolidated Statements of Income.

The details of charges and recoveries for fiscal 2021 and fiscal 2020 are as follows:

In fiscal 2020, the Company recorded as a receivable, \$17,037, consisting of write-offs for damages caused to its fixed assets and inventories, as well as for cleanup, asset replacement and other ancillary activities directly associated with the fire and received \$12,000 related to its initial claims.

During fiscal 2021, the Company recorded an additional \$16,580 as a receivable for cleanup and received \$21,617 from the insurance carrier.

In addition to the property damage claim, the Company received \$12,500 in business interruption claims, of which \$5,000 was recorded in fiscal 2020 and \$7,500 in fiscal 2021, and was credited to cost of goods sold, in the respective periods.

## 21. Warranty

The Company provides for estimated product warranty expenses when products are sold, with related liabilities included within accrued expenses and other liabilities. As warranty estimates are forecasts that are based on the best available information, primarily historical claims experience, costs of claims may ultimately differ from amounts provided. An analysis of changes in the liability for product warranties is as follows:

	Fiscal year ended March 31,		
	2023	2022	2021
Balance at beginning of year	\$ 54,978	\$ 58,962	\$ 63,525
Current year provisions	29,132	17,645	27,645
Costs incurred	(25,251)	(20,648)	(34,346)
Foreign currency translation adjustment	(2,229)	(981)	2,138
Balance at end of year	<u>\$ 56,630</u>	<u>\$ 54,978</u>	<u>\$ 58,962</u>

## 22. Other (Income) Expense, Net

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

	Fiscal year ended March 31,		
	2023	2022	2021
Foreign exchange transaction (gains) losses	\$ 671	\$ (7,169)	\$ 6,696
Non-service components of pension expense	315	430	1,279
Other	7,207	1,274	(171)
Total	<u>\$ 8,193</u>	<u>\$ (5,465)</u>	<u>\$ 7,804</u>

## 23. Business Segments

The Company's chief operating decision maker, or CODM (the Company's Chief Executive Officer), reviews financial information for purposes of assessing business performance and allocating resources, by focusing on the lines of business on a global basis. The Company excludes certain items that are not included in the segment performance as these are managed and viewed on a consolidated basis. The Company identifies the following as its three operating segments, based on lines of business:

- **Energy Systems** - uninterruptible power systems, or “UPS” applications for computer and computer-controlled systems used in data centers, as well as telecommunications systems, switchgear and electrical control systems used in industrial facilities and electric utilities, large-scale energy storage and energy pipelines. Energy Systems also includes highly integrated power solutions and services to broadband, telecom, renewable and industrial customers, as well as thermally managed cabinets and enclosures for electronic equipment and batteries.
- **Motive Power** - power for electric industrial forklifts used in manufacturing, warehousing and other material handling applications as well as mining equipment, diesel locomotive starting and other rail equipment; and
- **Specialty** - premium batteries for starting, lighting and ignition applications in premium automotive and large over-the-road trucks, energy storage solutions for satellites, military land vehicles, aircraft, submarines, tactical vehicles, as well as medical devices and equipment.

The operating segments also represent the Company's reportable segments under ASC 280, *Segment Reporting*.

Summarized financial information related to the Company's reportable segments at March 31, 2023, 2022 and 2021 and for each of the fiscal years then ended is shown below.

	Fiscal year ended March 31,		
	2023	2022	2021
<b>Net sales by segment to unaffiliated customers</b>			
Energy Systems	\$ 1,738,195	\$ 1,536,673	\$ 1,380,278
Motive Power	1,451,244	1,361,254	1,163,710
Specialty	519,140	459,392	433,944
Total net sales	<u><u>\$ 3,708,579</u></u>	<u><u>\$ 3,357,319</u></u>	<u><u>\$ 2,977,932</u></u>
<b>Operating earnings by segment</b>			
Energy Systems	\$ 62,305	\$ 18,531	\$ 67,060
Motive Power	178,904	169,740	143,541
Specialty	37,469	43,491	46,148
Production tax credits from IRA 45X	17,283	—	—
Inventory step up to fair value relating to acquisitions and exit activities - Energy Systems	211	(186)	—
Inventory adjustment relating to exit activities - Motive	(892)	(2,418)	—
Inventory step up to fair value relating to acquisitions - Specialty	—	—	—
Restructuring and other exit charges - Energy Systems	(1,441)	(2,713)	(3,187)
Restructuring and other exit charges - Motive Power	(12,864)	(17,059)	(36,798)
Restructuring and other exit charges - Specialty	(2,134)	1,016	(389)
Impairment of goodwill <sup>(3)</sup>	—	—	—
Impairment of indefinite-lived intangibles - Energy Systems	(100)	(501)	—
Impairment of indefinite-lived intangibles - Motive Power	—	(677)	—
Impairment of indefinite-lived intangibles - Specialty	(380)	—	—
Loss on assets held for sale - Motive Power	—	(2,973)	—
Total operating earnings <sup>(2)</sup>	<u><u>\$ 278,361</u></u>	<u><u>\$ 206,251</u></u>	<u><u>\$ 216,375</u></u>
<b>Capital Expenditures</b>			
Energy Systems	\$ 37,249	\$ 33,614	\$ 34,826
Motive Power	16,373	13,887	14,154
Specialty	35,150	26,540	21,040
Total	<u><u>\$ 88,772</u></u>	<u><u>\$ 74,041</u></u>	<u><u>\$ 70,020</u></u>
<b>Depreciation and Amortization</b>			
Energy Systems	\$ 52,034	\$ 54,580	\$ 57,864
Motive Power	22,404	24,918	21,706
Specialty	16,715	16,380	14,512
Total	<u><u>\$ 91,153</u></u>	<u><u>\$ 95,878</u></u>	<u><u>\$ 94,082</u></u>

(1) Reportable segments do not record inter-segment revenues and accordingly there are none to report.

(2) The Company does not allocate interest expense or other (income) expense, net, to the reportable segments.

The Company's property, plant and equipment by reportable segments as of March 31, 2023 and 2022 are as follows:

	<b>March 31, 2023</b>	<b>March 31, 2022</b>
<b>Property, plant and equipment, net</b>		
Energy Systems	\$ 199,414	\$ 216,853
Motive Power	142,301	145,431
Specialty	171,568	140,980
<b>Total</b>	<b>\$ 513,283</b>	<b>\$ 503,264</b>

The Company markets its products and services in over 100 countries. Sales are attributed to countries based on the location of sales order approval and acceptance. Sales to customers in the United States were 63.4%, 60.7% and 59.8% for fiscal years ended March 31, 2023, 2022 and 2021, respectively. Property, plant and equipment, net, attributable to the United States as of March 31, 2023 and 2022, were \$336,970 and \$320,208, respectively. No single country, outside the United States, accounted for more than 10% of the consolidated net sales or net property, plant and equipment and, therefore, was deemed not material for separate disclosure.

#### **24. Subsequent Events**

On May 24, 2023, the Board of Directors approved a quarterly cash dividend of \$0.175 per share of common stock to be paid on June 30, 2023, to stockholders of record as of June 16, 2023.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

(a) Disclosure Controls and Procedures. The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective.

(b) Internal Control Over Financial Reporting. There have not been any changes in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fourth quarter of the fiscal year to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

The report called for by Item 308(a) of Regulation S-K is included herein as "Management Report on Internal Control Over Financial Reporting."

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. With the participation of the Chief Executive Officer and Chief Financial Officer, our management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework and criteria established in *Internal Control—Integrated Framework*, issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework).

Based on this evaluation, our management has concluded that our internal control over financial reporting was effective as of March 31, 2023.

The attestation report called for by Item 308(b) of Registration S-K is included herein as "Report of Independent Registered Public Accounting Firm," which appears in Item 8 in this Annual Report on Form 10-K.

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/s/ David M. Shaffer

**David M. Shaffer  
Chief Executive Officer**

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/s/ Andrea J. Funk

**Andrea J. Funk  
Chief Financial Officer**

**ITEM 9B. OTHER INFORMATION**

Not applicable.

**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 by reference from the sections entitled “Board of Directors,” “Executive Officers,” “Section 16(a) Beneficial Ownership Reporting Compliance,” “Corporate Governance—Independence of Directors,” “Corporate Governance—Process for Selection of Director Nominee Candidates,” “Audit Committee Report,” and “Certain Relationships and Related Transactions—Employment of Related Parties” of the Company’s definitive proxy statement for its 2023 Annual Meeting of Stockholders (the “Proxy Statement”) to be filed no later than 120 days after the fiscal year end.

We have adopted a Code of Business Conduct and Ethics that applies to all of our officers, directors and employees (including our Chief Executive Officer, Chief Financial Officer, and Corporate Controller) and have posted the Code on our website at [www.enersys.com](http://www.enersys.com), and a copy is available in print to any stockholder who requires a copy. If we waive any provision of the Code applicable to any director, our Chief Executive Officer, Chief Financial Officer, and Corporate Controller, such waiver will be promptly disclosed to the Company’s stockholders through the Company’s website.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item is incorporated by reference from the sections entitled “Corporate Governance—Compensation Committee” and “Executive Compensation” of the Proxy Statement) to be filed no later than 120 days after the fiscal year end.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT RELATED STOCKHOLDER MATTERS**

The information required by this item is incorporated by reference from the section entitled “Security Ownership of Certain Beneficial Owners and Management” of the Proxy Statement to be filed no later than 120 days after the fiscal year end.

Plan Category	Equity Compensation Plan Information		
	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	2,243,675 <sup>(1)</sup>	\$ 78.80 <sup>(2)</sup>	2,221,003
Equity compensation plans not approved by security holders	—	—	—
Total	2,243,675	\$ 78.80	2,221,003

(1) Assumes a 200% payout on market and performance condition-based awards.

(2) Awards of restricted stock units, market and performance condition-based awards and deferred stock units held in both the EnerSys Voluntary Deferred Compensation Plan for Non-Employee Directors and the EnerSys Voluntary Deferred Compensation Plan for Executives were not included in calculating the weighted-average exercise price as they will be settled in shares of common stock for no consideration.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item is incorporated by reference from the sections entitled “Corporate Governance,” and “Certain Relationships and Related Transactions” of the Proxy Statement to be filed no later than 120 days after the fiscal year end.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this item is incorporated by reference from the section entitled “Audit Committee Report” of the Proxy Statement to be filed no later than 120 days after the fiscal year end.

**PART IV****ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as part of this Report:

(1) Consolidated Financial Statements

See Index to Consolidated Financial Statements.

All other schedules are omitted because they are not applicable or the required information is contained in the consolidated financial statements or notes thereto.

(b) The following documents are filed herewith as exhibits:

Exhibit Number	Description of Exhibit
3.1	<a href="#"><u>Fifth Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to Amendment No. 3 to EnerSys' Registration Statement on Form S-1 (File No. 001-32253) filed on February 6, 2013).</u></a>
3.2	<a href="#"><u>Fourth Amended and Restated Bylaws (incorporated by reference to Exhibits 3.1 to EnerSys' Current Report on Form 8-K (File No. 001-32253) filed on November 10, 2021).</u></a>
4.1	<a href="#"><u>Indenture, dated as of April 23, 2015, among EnerSys, the Guarantors party thereto and MUFG Union Bank, N.A., as Trustee (incorporated by reference to Exhibit 4.1 to EnerSys' Current Report on Form 8-K (File No. 00-32253) filed on April 23, 2015).</u></a>
4.2	<a href="#"><u>Fourth Supplemental Indenture, dated as of December 11, 2019, among EnerSys, the Guarantors party thereto and MUFG Union Bank, N.A., as Trustee (incorporated by reference to Exhibit 4.1 to EnerSys' Current Report on Form 8-K (File No. 00-32253) filed on December 11, 2019).</u></a>
4.3	<a href="#"><u>Form of 4.375% Senior Note due 2027 (incorporated by reference to Exhibit 4.2 to EnerSys' Current Report on Form 8-K (File No. 00-32253) filed on December 11, 2019).</u></a>
4.4	<a href="#"><u>Description of Capital Stock (filed herewith).</u></a>
10.1	<a href="#"><u>Credit Agreement, dated as of August 4, 2017, among EnerSys, certain other borrowers and guarantors identified therein, Bank of America, N.A., as administrative agent, swing line lender and Letters of Credit issuer, and other lenders party thereto (incorporated herein by reference to Exhibit 10.4 of EnerSys' Quarterly Report on Form 10-Q for the quarter ended July 2, 2017 (File No. 001-32253) filed with the SEC on August 9, 2017).</u></a>
10.2	<a href="#"><u>Stock Subscription Agreement, dated March 22, 2002, among EnerSys Holdings Inc., Morgan Stanley Dean Witter Capital Partners IV, L.P., Morgan Stanley Dean Witter Capital Investors IV, L.P., MSDW IV 892 Investors, L.P., Morgan Stanley Global Emerging Markets Private Investment Fund, L.P. and Morgan Stanley Global Emerging Markets Private Investors, L.P. (incorporated by reference to Exhibit 10.27 to Amendment No. 3 to EnerSys' Registration Statement on Form S-1 (File No. 333-115553) filed on July 13, 2004).</u></a>
10.3	<a href="#"><u>EnerSys 2013 Management Incentive Plan (incorporated by reference to Appendix A to EnerSys' Definitive Proxy Statement on Schedule 14A (File No. 001-32253) filed on June 27, 2013).</u></a>
10.4	<a href="#"><u>Second Amended and Restated EnerSys 2010 Equity Incentive Plan (incorporated by reference to Appendix A to EnerSys' Definitive Proxy Statement on Schedule 14A (File No. 001-32253) filed on June 23, 2016).</u></a>
10.5	<a href="#"><u>EnerSys Voluntary Deferred Compensation Plan for Executives as amended August 5, 2010, and May 26, 2011 (incorporated by reference to Exhibit 10.23 to EnerSys' Annual Report on Form 10-K (File No. 001-32253) filed on May 31, 2011).</u></a>

Exhibit Number	Description of Exhibit
10.6	<a href="#">EnerSys 2018 Employee Stock Purchase Plan (incorporated by reference to Appendix A to EnerSys' Definitive Proxy Statement on Schedule 14A (File No. 001-32253) filed on June 21, 2018).</a>
10.7	<a href="#">Form of Deferred Stock Unit Agreement – Non-Employee Directors – 2010 Equity Incentive Plan (incorporated by reference to Exhibit 10.35 to EnerSys' Annual Report on Form 10-K (File No. 001-32253) filed on May 31, 2011).</a>
10.8	<a href="#">Form of Severance Agreement, (incorporated by reference to Exhibit 10.37 to EnerSys' Annual Report on Form 10-K (File No. 001-32253) filed on May 28, 2013).</a>
10.9	<a href="#">Form of Stock Option Agreement - Employees - 2010 Equity Incentive Plan (incorporated by reference to Exhibit 10.32 to EnerSys' Annual Report on Form 10-K for the year ended March 31, 2014 (File No. 001-32253) filed on May 28, 2014).</a>
10.10	<a href="#">Form of Indemnification Agreement - Directors and Officers (incorporated by reference to Exhibit 10.37 to EnerSys' Annual Report or Form 10-K for the year ended March 31, 2016 (File No. 001-32253) filed on May 28, 2014).</a>
10.11	<a href="#">Form of Indemnification Agreement - Directors and Officers (incorporated by reference to Exhibit 10.26 to EnerSys' Annual Report or Form 10-K for the year ended March 31, 2017 (File No. 001-32253) filed on May 30, 2017).</a>
10.12	<a href="#">Form of Stock Option Agreement - Employees - 2010 Equity Incentive Plan (incorporated by reference to Exhibit 10.42 to EnerSys' Annual Report on Form 10-K for the year ended March 31, 2015 (File No. 001-32253) filed on May 27, 2015).</a>
10.13	<a href="#">Form of Stock Option Agreement - Employees - 2010 Equity Incentive Plan (incorporated by reference to Exhibit 10.46 to EnerSys' Annual Report on Form 10-K for the year ended March 31, 2016 (File No. 001-32253) filed on May 31, 2016).</a>
10.14	<a href="#">Form of letter agreement, dated June 7, 2017, between EnerSys and David M. Shaffer (incorporated herein by reference to Exhibit 10.1 of EnerSys' Current Report on Form 8-K (File No. 001-32253) filed with the SEC on June 12, 2017).</a>
10.15	<a href="#">Employment Offer Letter, dated October 20, 2014, of EnerSys Delaware Inc. to David M. Shaffer (incorporated by reference to Exhibit 10.5 to EnerSys' Quarterly Report on Form 10-Q for the period ended September 28, 2014 (File No. 001-32253) filed on November 5, 2014).</a>
10.16	<a href="#">Form of letter agreement, dated June 7, 2017, between EnerSys and an executive officer (incorporated herein by reference to Exhibit 1 of EnerSys' Current Report on Form 8-K (File No. 001-32253) filed with the SEC on June 12, 2017).</a>
10.17	<a href="#">Form of Deferred Stock Unit Agreement - Non-Employee Directors - 2017 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.5 of EnerSys' Quarterly Report on Form 10-Q for the quarter ended July 2, 2017 (File No. 001-32253) filed with the SEC on August 9, 2017).</a>
10.18	<a href="#">Second Amendment to Credit Agreement, dated as of July 15, 2021, among EnerSys, certain of its subsidiaries party thereto, Bank of America, N.A., as administrative agent, swing line lender and l/c issuer, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 of EnerSys' Current Report on Form 8-K (File No. 001-32253) filed with the SEC on July 15, 2021).</a>
10.19	<a href="#">Third Amendment to Credit Agreement, dated as of September 8, 2022, among the Company, certain of its subsidiaries party thereto, Bank of America, N.A., as administrative agent, and the other lenders party thereto (incorporation by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File No. 001-32253) filed on September 8, 2022).</a>
10.20	<a href="#">Fourth Amendment to Credit Agreement, dated as of March 22, 2023, among the Company, certain of its subsidiaries party thereto, Bank of America, N.A., as administrative agent, and the other lenders party thereto (filed herewith)</a>

Exhibit Number	Description of Exhibit
10.21	<a href="#">Form of Severance Letter Agreement, dated April 1, 2019, between EnerSys and Shawn M. O'Connell (incorporated by reference to Exhibit 10.28 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2020 (File No. 001-32253) filed with the SEC on June 1, 2020).</a>
10.22	<a href="#">Employment Agreement, dated as of October 6, 2008, between Alpha Technologies, Inc. and Andrew Zogby (incorporated by reference to Exhibit 10.29 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2020 (File No. 001-32253) filed with the SEC on June 1, 2020).</a>
10.23	<a href="#">Employment Agreement, dated as of September 13, 2012, between Alpha Technologies, Inc. and Andrew Zogby (incorporated by reference to Exhibit 10.30 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2020 (File No. 001-32253) filed with the SEC on June 1, 2020).</a>
10.24	<a href="#">Employment Agreement Extension, effective June 27, 2017, between Alpha Technologies, Inc. and Andrew Zogby (incorporated by reference to Exhibit 10.31 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2020 (File No. 001-32253) filed with the SEC on June 1, 2020).</a>
10.25	<a href="#">Assignment of Employment Agreement, dated December 6, 2018, between Alpha Technologies, Inc. and Alpha Technologies Services, Inc. regarding Employment Agreement, dated as of October 6, 2008, between Alpha Technologies, Inc. and Andrew Zogby and subsequent extensions (incorporated by reference to Exhibit 10.32 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2020 (File No. 001-32253) filed with the SEC on June 1, 2020).</a>
10.26	<a href="#">Form of Severance Letter Agreement, December 28, 2022, between EnerSys and Andrew Zogby (incorporated by reference to Exhibit 10.1 of EnerSys' Current Report on Form 8-K (File No. 001-32253) filed with the SEC on December 28, 2022).</a>
10.27	<a href="#">Form of Severance Letter Agreement, dated April 1, 2021, between EnerSys and Andrea J. Funk (incorporated by reference to Exhibit 10.1 of EnerSys' Current Report on Form 8-K (File No. 001-32253) filed with the SEC on April 1, 2022).</a>
10.28	<a href="#">Amended and Restated 2017 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.32 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2021 (File No. 001-32253) filed on May 26, 2021).</a>
10.29	<a href="#">Form of Deferred Stock Unit Agreement – Non-Employee Directors – Amended and Restated 2017 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.32 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2021 (File No. 001-32253) filed on May 26, 2021).</a>
10.30	<a href="#">Form of Stock Option Agreement – Employees – Amended and Restated 2017 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.32 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2021 (File No. 001-32253) filed on May 26, 2021).</a>
10.31	<a href="#">Form of Restricted Stock Unit Agreement - Employees – Amended and Restated 2017 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.32 of EnerSys' Annual Report on Form 10-K for the fiscal year ended March 31, 2021 (File No. 001-32253) filed on May 26, 2021).</a>
21.1	<a href="#">Subsidiaries of the Registrant (filed herewith).</a>
23.1	<a href="#">Consent of Ernst &amp; Young LLP (filed herewith).</a>
31.1	<a href="#">Certification of the Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) Under the Securities Exchange Act of 1934 (filed herewith).</a>
31.2	<a href="#">Certification of the Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) Under the Securities Exchange Act of 1934 (filed herewith).</a>
32.1	<a href="#">Certification of the 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 (furnished herewith).</a>

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
101.INS	XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Document
101.LAB	XBRL Taxonomy Extension Label Document
101.PRE	XBRL Taxonomy Extension Presentation Document

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ENERSYS

By \_\_\_\_\_

/s/ DAVID M. SHAFFER

May 24, 2023

**David M. Shaffer**  
Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose name appears below hereby appoints David M. Shaffer and Andrea J. Funk and each of them, as his true and lawful agent, with full power of substitution and resubstitution, for him and in his, place or stead, in any and all capacities, to execute any and all amendments to the within annual report, and to file the same, together with all exhibits thereto, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this annual report has been signed below by the following persons in the capacities and on the dates indicated:

Name	Title	Date
/s/ DAVID M. SHAFFER <b>David M. Shaffer</b>	Chief Executive Officer	May 24, 2023
/s/ ANDREA J. FUNK <b>Andrea J. Funk</b>	Chief Financial Officer (Principal Accounting Officer)	May 24, 2023
/s/ CAROLINE CHAN <b>Caroline Chan</b>	Director	May 24, 2023
/s/ HWAN-YOON F. CHUNG <b>Hwan-yoon F. Chung</b>	Director	May 24, 2023
/s/ STEVEN M. FLUDDER <b>Steven M. Fludder</b>	Director	May 24, 2023
/s/ HOWARD I. HOFFEN <b>Howard I. Hoffen</b>	Director	May 24, 2023
/s/ ARTHUR T. KATSAROS <b>Arthur T. Katsaros</b>	Director	May 24, 2023
/s/ GENERAL ROBERT MAGNUS, USMC (RETIRED) <b>General Robert Magnus, USMC (Retired)</b>	Director	May 24, 2023
/s/ TAMARA MORYTKO <b>Tamara Morytko</b>	Director	May 24, 2023
/s/ PAUL J. TUFANO <b>Paul J. Tufano</b>	Director	May 24, 2023
/s/ RONALD P. VARGO <b>Ronald P. Vargo</b>	Director	May 24, 2023
/s/ RUDOLPH WYNTER <b>Rudolph Wynter</b>	Director	May 24, 2023

**DESCRIPTION OF CAPITAL STOCK**

The following information describes our capital stock and provisions of our certificate of incorporation, as amended, and bylaws, as amended. This description is only a summary. You should refer to our certificate of incorporation and bylaws, which have been filed with the Securities and Exchange Commission.

**General Matters**

Our authorized capital stock consists of 135,000,000 shares of common stock, par value \$0.01 per share, of which 40,909,454 shares were issued and outstanding as of May 19, 2023 and 1,000,000 shares of undesignated preferred stock, par value \$0.01 per share, none of which was outstanding as of May 19, 2023.

The following summary describes the material provisions of our capital stock. This summary is not meant to be a complete description of our capital stock and we urge you to read our certificate of incorporation and our bylaws, which are incorporated by reference into this prospectus.

Certain provisions of our certificate of incorporation and bylaws summarized below may be deemed to have an anti-takeover effect and may delay or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for shares of common stock.

**Common Stock**

We have one class of common stock. All holders of shares of common stock are entitled to the same rights and privileges. Holders of shares of common stock are entitled to one vote per share on the election or removal of our directors and on all other matters to be voted on by our stockholders.

Holders of shares of common stock are not entitled to any preemptive or preferential rights to subscribe for additional shares of any class of our capital stock. The holders of shares of common stock are entitled to receive dividends, when, as and if declared by our board of directors, out of funds legally available therefor. Holders of shares of common stock are entitled to share ratably, upon dissolution or liquidation, in the assets available for distribution to holders of shares of common stock after the payment of all prior claims.

**Preferred Stock**

Our authorized capital stock includes 1,000,000 shares of undesignated preferred stock, none of which is issued or outstanding. Our board of directors is authorized, without further action by our stockholders, to provide for the issuance of such preferred stock in one or more series and to fix the dividend rate, conversion privileges, voting rights, redemption rights, redemption price or prices, liquidation preferences and qualifications, limitations and restrictions thereof with respect to each series. Holders of shares of preferred stock may be entitled to receive a preference payment in the event of any liquidation, dissolution or winding-up of our company before any payment is made to the holders of shares of our common stock. In some circumstances, the issuance of shares of preferred stock may render more difficult or tend to discourage a merger, tender offer or proxy contest, the assumption of control by a holder of a large block of our securities or the removal of incumbent management. Upon the affirmative vote of our board of directors, without stockholder approval, we may issue shares of preferred stock with voting and conversion rights that could adversely affect the holders of shares of our common stock. We have no current intention to issue any shares of preferred stock.

**Section 203 of the Delaware General Corporation Law**

Section 203 of the Delaware General Corporation Law may have the effect of delaying, deferring or preventing a change of control. In general, Section 203 of the Delaware General Corporation Law prohibits a publicly held

Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years following the date such stockholder became an “interested stockholder,” unless:

- prior to such date the board of directors approved either the “business combination” or the transaction that resulted in the stockholder becoming an “interested stockholder”;
- upon consummation of the transaction that resulted in the stockholder becoming an “interested stockholder,” the “interested stockholder” owned at least 85% of the voting stock outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding those shares owned by persons who are directors and also officers and certain other stockholders; or
- on or subsequent to such date the “business combination” is approved by the board of directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the “interested stockholder.”

A “business combination” includes certain mergers, stock or asset sales and other transactions resulting in a financial benefit to the “interested stockholder.” An “interested stockholder” is a person who, together with affiliates and associates, owns (or in the preceding three years, did own) 15% or more of the outstanding voting stock. The statute could prohibit or delay mergers or other takeover or change in control attempts and, accordingly, may discourage attempts to acquire us.

#### **Limitation of Liability and Indemnification of Directors and Officers**

We have included in our certificate of incorporation and bylaws provisions to:

- eliminate the personal liability of our directors for monetary damages resulting from breaches of their fiduciary duty, but such provision does not eliminate liability for breaches of the duty of loyalty, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, violations under Section 174 of the Delaware General Corporation Law or for any transaction from which the director derived an improper personal benefit; and
- indemnify our directors and officers to the fullest extent permitted by the Delaware General Corporation Law, including circumstances in which indemnification is otherwise discretionary.

Acting pursuant to the provisions of our certificate of incorporation and bylaws and the provisions of Section 145 of the Delaware General Corporation Law, we have entered into agreements with each of our officers and directors to indemnify them to the fullest extent permitted by such provisions and such law. We also are authorized to carry directors’ and officers’ insurance providing indemnification for our directors, officers and certain employees for some liabilities. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive officers.

The limitation of liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, investments in our common stock may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors or officers pursuant to the provisions described above, or otherwise, we have been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

## **Other Provisions of our Certificate of Incorporation and Bylaws**

### ***Classified Board of Directors.***

Our certificate of incorporation provides for our board of directors to be divided into three classes of directors serving staggered three-year terms. Each class shall consist, as nearly as may be practicable, of one-third of the total number of directors constituting our entire board of directors. As a result, approximately one-third of our board of directors will be elected each year. When coupled with the provisions of our certificate of incorporation and bylaws authorizing only our board of directors to fill vacant directorships, a stockholder may be precluded from removing incumbent directors without cause and simultaneously gaining control of our board of directors by filling the vacancies created by such removal with its own nominees. This provision of our certificate of incorporation may not be amended or repealed by our stockholders except with the consent of the holders of at least two-thirds of our outstanding common stock.

### ***Special Meeting of Stockholders.***

Our certificate of incorporation provides that special meetings of our stockholders may be called only by our board of directors or our Chairman of the Board. This provision makes it more difficult for stockholders to take action opposed by our board of directors. This provision of our certificate of incorporation may not be amended or repealed by our stockholders except with the consent of the holders of at least two-thirds of our outstanding common stock.

### ***No Stockholder Action by Written Consent.***

Our certificate of incorporation provides that no action required or permitted to be taken at any annual or special meeting of our stockholders may be taken without a meeting, and the power of our stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied. Such provision limits the ability of any stockholder to take action immediately and without prior notice to our board of directors. Such a limitation on a majority stockholder's ability to act might affect such person's or entity's decision to purchase our voting securities. This provision of our certificate of incorporation may not be amended or repealed by the stockholders except with the consent of the holders of at least two-thirds of our outstanding common stock.

### ***Advance Notice Requirements for Stockholder Proposals and Director Nominations.***

Our bylaws provide that stockholders seeking to bring business before an annual meeting of stockholders, or to nominate candidates for election as directors at an annual or special meeting of stockholders, must provide timely notice thereof in writing. To be timely, a stockholder's notice must be delivered to, or mailed and received at, our principal executive offices: in the case of an annual meeting that is called for a date that is within 30 days before or after the anniversary date of the immediately preceding annual meeting of stockholders, not less than 90 days nor more than 120 days prior to such anniversary date or, in the case of a special meeting called for the purpose of electing directors, not less than 90 days nor more than 120 days prior to such special meeting or not later than the close of business on the tenth day following the date on which public disclosure of the date of the meeting is made; and in the case of an annual meeting that is called for a date that is not within 30 days before or after the anniversary date of the immediately preceding annual meeting, not later than the close of business on the tenth day following the date on which public disclosure of the date of the meeting was made. Our bylaws also specify certain requirements for a stockholder's notice to be in proper written form. These provisions may preclude some stockholders from bringing matters before the stockholders at an annual or special meeting or from making nominations for directors at an annual or special meeting. You should refer to our bylaws for a complete description of these requirements. As set forth below, our bylaws may not be amended or repealed by our stockholders, except with the consent of holders of at least two-thirds of our outstanding common stock.

***Majority Vote Requirement for Uncontested Director Elections.***

The Corporate Governance and Nominating Committee has established informal procedures under which a director nominee must tender his or her contingent resignation to the Nominating and Corporate Governance Committee in advance of an annual meeting of stockholders. If the Director Nominee fails to receive a majority number of votes for re-election in an uncontested election at an annual meeting, the Nominating and Corporate Governance Committee will make a recommendation to the board of directors whether to accept or reject the resignation or whether other action shall be taken. The board of directors will act on the Committee's recommendation and publicly disclose its decision and the rationale behind it within 90 days from the date of the certification of the election results. The resignation becomes effective only if the director fails to receive a majority number of votes for re-election in an uncontested election at an annual meeting and the board of directors accepts the resignation.

***Adjournment of Meetings of Stockholders.***

Our bylaws provide that when a meeting of our stockholders is convened, the presiding officer, if directed by our board of directors, may adjourn the meeting if no quorum is present for the transaction of business or if our board of directors determines that adjournment is necessary or appropriate to enable the stockholders to consider fully information that our board of directors determines has not been made sufficiently or timely available to stockholders or to otherwise effectively exercise their voting rights. This provision will, under certain circumstances, make more difficult or delay actions by the stockholders opposed by our board of directors. The effect of such provision could be to delay the timing of a stockholders' meeting, including in cases where stockholders have brought proposals before the stockholders that are in opposition to those brought by our board of directors and therefore may provide our board of directors with additional flexibility in responding to such stockholder proposals. As set forth below, our bylaws may not be amended or repealed by our stockholders, except with the consent of holders of at least two-thirds of our outstanding common stock.

***No Cumulative Voting.***

The Delaware General Corporation Law provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless our certificate of incorporation provides otherwise. Our certificate of incorporation does not provide for cumulative voting.

***Authorized but Unissued Capital Stock.***

Our certificate of incorporation authorizes our board of directors to issue one or more classes or series of preferred stock, and to determine, with respect to any such class or series of preferred stock, the voting powers (if any), designations, powers, preferences, rights and qualifications, limitations or restrictions of such preferred stock. We have no current intention to issue any shares of preferred stock.

The Delaware General Corporation Law does not require stockholder approval for any issuance of previously authorized shares of our capital stock. However, the listing requirements of the New York Stock Exchange, which will apply so long as our common stock is listed on the New York Stock Exchange, require, among other things, stockholder approval of certain related party transactions involving issuances of common stock, or securities convertible into or exercisable for common stock, if the issuance exceeds 1% of the number of shares of common stock outstanding or 1% of the voting power outstanding before the issuance. In addition, shareholder approval is required for certain issuances of common stock, or securities convertible into or exercisable for common stock, equal to or in excess of 20% of the voting power outstanding before such issuance or the number of shares of our common stock outstanding before the issuance of common stock or securities convertible into or exercisable for common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our board of directors to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of our company by means of a merger, tender offer, proxy contest

or otherwise, and thereby protect the continuity of our management and possibly deprive the stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

***Amendment of the Bylaws.***

Our certificate of incorporation provides that our bylaws may not be amended or repealed by our stockholders except with the consent of holders of at least two-thirds of our outstanding common stock and grants our board of directors the authority to amend and repeal our bylaws without a stockholder vote in any manner not inconsistent with the laws of Delaware or our certificate of incorporation. This provision makes it more difficult for our stockholders to make changes to our bylaws that are opposed by our board of directors. This provision of our certificate of incorporation may not be amended or repealed by our stockholders except with the consent of holders of at least two-thirds of our outstanding common stock.

**Transfer Agent and Registrar**

Computershare is the transfer agent and registrar for our common stock.

## FOURTH AMENDMENT TO CREDIT AGREEMENT

THIS FOURTH AMENDMENT TO CREDIT AGREEMENT (this “Agreement”), dated as of March 22, 2023 (the “Fourth Amendment Effective Date”), is among, EnerSys, a Delaware corporation (the “Company”), the Designated Borrowers party hereto, the Guarantors party hereto, the Lenders party hereto, and Bank of America, N.A., as Administrative Agent and the L/C Issuer. All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Existing Credit Agreement (as defined below) or the Amended Credit Agreement (as defined below), as applicable.

## WITNESSETH

WHEREAS, pursuant to that certain Credit Agreement, dated as of August 4, 2017 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time prior to the date hereof, the “Existing Credit Agreement”), among the Borrowers from time to time party thereto, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent, Swing Line Lender and the L/C Issuer, the Lenders and the L/C Issuer have agreed to provide the Borrowers with the credit facilities provided for therein;

WHEREAS, the Borrowers have requested that the Lenders and the L/C Issuer amend the Existing Credit Agreement as set forth herein; and

WHEREAS, the Lenders and the L/C Issuer party hereto have agreed to amend the Existing Credit Agreement as set forth herein, subject to the terms and conditions specified in this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the parties hereto hereby agrees as follows:

1. Amendments to Existing Credit Agreement.

(a) The Existing Credit Agreement is amended in its entirety to read as set forth in Annex A attached hereto to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~ or stricken text) and insert the added text (indicated textually in the same manner as the following example: added text or ~~added text~~) as shown therein (the Existing Credit Agreement, as so amended, the “Amended Credit Agreement”).

(b) Exhibit A-1 to the Existing Credit Agreement is hereby amended in its entirety to read in the form of Exhibit A-1 attached hereto.

(c) Except as set forth in Section 1(b) herein, no schedules or exhibits to the Existing Credit Agreement are modified or otherwise affected hereby.

(d) The parties hereto agree that, on and as of the Fourth Amendment Effective Date after giving effect to this Agreement, all Obligations outstanding on and as of the Fourth Amendment Effective Date shall in all respects be continuing and shall be deemed to be Obligations under the Amended Credit Agreement. Neither this Agreement nor the Amended Credit Agreement is a novation of the Existing Credit Agreement, or shall by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the Administrative Agent, any Lender, or any other holder of the Obligations under the Existing Credit Agreement or any other Loan Document, and except as set forth herein, shall not alter, modify, amend, or in any way affect any of the terms, conditions, obligations, covenants, or agreements contained in the Existing Credit Agreement or any other Loan Document.

(e) Notwithstanding anything in this Agreement or the Amended Credit Agreement to the contrary, in lieu of any Borrower delivering a notice or taking any other action prescribed thereby, to the extent any Loan bearing interest at the LIBOR Rate is outstanding immediately

prior to the Fourth Amendment Effective Date, such Loan shall continue to bear interest at the LIBOR Rate, until the earlier of (x) the repayment of such Loan or (y) the end of the current Interest Period or payment period applicable to such Loan, in accordance with the terms of the Existing Credit Agreement.

2. Conditions Precedent to Effectiveness. This Agreement shall be effective on the Fourth Amendment Effective Date upon the satisfaction of the following conditions precedent:

(a) the Administrative Agent shall have received counterparts of this Agreement duly executed by the Company, the Designated Borrowers, the Guarantors, the Required Lenders, all Lenders (other than the Term A-3 Lenders), the Administrative Agent and the L/C Issuer; and

(b) the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, shall have received all fees due and payable in connection with this Agreement that are required to be paid on or before the Fourth Amendment Effective Date and, to the extent invoiced at least two (2) Business Days prior to the Fourth Amendment Effective Date, reimbursement or payment of all reasonable out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder and under the Amended Credit Agreement.

Without limiting the generality of Section 9.03(c) of the Existing Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 2, each of the Lenders and the L/C Issuer that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender or the L/C Issuer unless the Administrative Agent shall have received notice from such Lender or the L/C Issuer prior to the proposed Fourth Amendment Effective Date specifying its objection thereto.

3. Miscellaneous.

(a) The Loan Documents and the obligations of the Credit Parties thereunder are hereby ratified and confirmed and shall remain in full force and effect according to their terms. This Agreement is a Loan Document.

(b) Each Credit Party (i) acknowledges and consents to all of the terms and conditions of this Agreement, (ii) affirms all of its obligations under the Loan Documents, (iii) this Agreement and all documents executed in connection herewith do not operate to reduce or discharge its obligations under the Loan Documents, (iv) agrees that the Collateral Documents shall continue to be in full force and effect and are not impaired or adversely affected by this Agreement in any manner whatsoever, (v) confirms its grant of security interests pursuant to the Collateral Documents to which it is a party as Collateral for the Obligations and (vi) acknowledges that all Liens granted (or purported to be granted) pursuant to the Collateral Documents shall remain and continue in full force and effect in respect of, and to secure, the Obligations.

(c) Each Credit Party hereby represents and warrants as follows:

(i) such Credit Party has the requisite power and authority to execute, deliver and carry out the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

(ii) such Credit Party has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid and binding obligation of such Credit Party enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law);

(iii) neither the execution, delivery or performance by such Credit Party of this Agreement, nor compliance by such Credit Party with the terms and provisions thereof, nor the consummation of the transactions contemplated herein, (A) will contravene any material provision of any material applicable Law, (B) will violate or result in a default under any material indenture, agreement or instrument to which the Company or any of its Restricted Subsidiaries is a party or by which it or any of its property or assets are bound or to which it may be subject, (C) will result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Company or any of its Restricted Subsidiaries (other than pursuant to the Collateral Documents) or (D) will violate any provision of the certificate of incorporation, by-laws, certificate of limited liability company, limited liability company agreement or equivalent organizational document, as the case may be, of such Credit Party; and

(iv) except as may have been obtained or made on or prior to the Fourth Amendment Effective Date (and which remain in full force and effect on the Fourth Amendment Effective Date), no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority is required to authorize or is required in connection with (A) the execution, delivery and performance of this Agreement or (B) the legality, validity, binding effect or enforceability of this Agreement.

(d) Subject to Section 10.17 of the Amended Credit Agreement, this Agreement may be in the form of an Electronic Record and may be executed using Electronic Signatures (including facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. This Agreement may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Agreement. The authorization under this Section 3(d) may include use or acceptance by the Administrative Agent, the L/C Issuer and each Lender of a manually signed paper copy of this Agreement which has been converted into electronic form (such as scanned into .pdf format), or an electronically signed copy of this Agreement converted into another format, for transmission, delivery and/or retention.

(e) If any provision of this Agreement is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY OTHER JURISDICTION.

(g) The terms of Sections 10.14 and 10.15 of the Existing Credit Agreement with respect to submission to jurisdiction, waiver of venue, and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

[signature pages follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized officer as of the date first written above.

COMPANY: ENERSYS,

a Delaware corporation

By: /s/ Thomas L. O'Neill

Name: Thomas L. O'Neill

Title: Vice President, Treasurer and Assistant Secretary

DESIGNATED BORROWER: ALPHA TECHNOLOGIES LTD.,  
a British Columbia company

By: /s/ Thomas L. O'Neill

Name: Thomas L. O'Neill

Title: Treasurer

GUARANTORS: ENERSYS ADVANCED SYSTEMS INC.,  
a Delaware corporation

By: /s/ Thomas L. O'Neill

Name: Thomas L. O'Neill

Title: Treasurer

ENERSYS CAPITAL INC.,  
a Delaware corporation

By: /s/ Thomas L. O'Neill

Name: Thomas L. O'Neill

Title: Vice President and Treasurer

ENERSYS DELAWARE INC.,  
a Delaware corporation

By: /s/ Thomas L. O'Neill

Name: Thomas L. O'Neill

Title: Treasurer and Assistant Secretary

ENERSYS ENERGY PRODUCTS INC.,  
a Delaware corporation

By: /s/ Thomas L. O'Neill

Name: Thomas L. O'Neill

Title: Treasurer

[Signature Page to Fourth Amendment]

PURCELL SYSTEMS, INC.,  
a Delaware corporation

By: /s/ Thomas L. O'Neill  
Name: Thomas L. O'Neill  
Title: Treasurer

ESFINCO, LLC,  
a Delaware limited liability company

By: EnerSys Delaware Inc., its sole member

By: /s/ Thomas L. O'Neill  
Name: Thomas L. O'Neill  
Title: Treasurer and Assistant Secretary

HAWKER POWERSOURCE, INC.,  
a Delaware corporation

By: /s/ Thomas L. O'Neill  
Name: Thomas L. O'Neill  
Title: Treasurer and Assistant Secretary

ALPHA TECHNOLOGIES SERVICES, INC.,  
a Nevada corporation

By: /s/ Thomas L. O'Neill  
Name: Thomas L. O'Neill  
Title: Director and Authorized Signatory

[Signature Page to Fourth Amendment]

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.,  
as Administrative Agent

By: /s/ Ronaldo Naval  
Name: Ronaldo Naval  
Title: Vice President

BANK OF AMERICA, N.A., acting through its Canada Branch, as Canadian Administrative Agent

By: /s/ Medina Sales de Andrade  
Name: Medina Sales de Andrade  
Title: Vice President

[Signature Page to Fourth Amendment]

LENDERS: BANK OF AMERICA, N.A.,  
as a Lender and the L/C Issuer

By: /s/ Oscar D. Cortez  
Name: Oscar D. Cortez  
Title: Director

[Signature Page to Fourth Amendment]

TD BANK, N.A.,  
as a Lender

By: /s/ Bernadette Collins  
Name: Bernadette Collins  
Title: Senior Vice President

[Signature Page to Fourth Amendment]

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Barbara K. Angel  
Name: Barbara K. Angel  
Title: Director

[Signature Page to Fourth Amendment]

JPMORGAN CHASE BANK, N.A.,  
as a Lender

By: /s/ Anthony Galea  
Name: Anthony Galea  
Title: Executive Director

JPMORGAN CHASE BANK, N.A., TORONTO BRANCH  
as a Lender

By: /s/ Jeff Coleman  
Name: Jeff Coleman  
Title: Executive Director

[Signature Page to Fourth Amendment]

PNC BANK, NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Domenic D'Ginto  
Name: Domenic D'Ginto  
Title: Managing Director

PNC BANK, Canada Branch,  
as a Lender

By: /s/  
Name: Martin Peichl  
Title: Senior Vice President

[Signature Page to Fourth Amendment]

TRUIST BANK,  
as a Lender

By: /s/ Jason Hembree  
Name: Jason Hembree  
Title: Vice President

[Signature Page to Fourth Amendment]

CITIZENS BANK, N.A.,  
as a Lender

By: /s/ Pamela Hansen  
Name: Pamela Hansen  
Title: Senior Vice President

[Signature Page to Fourth Amendment]

THE HUNTINGTON NATIONAL BANK,  
as a Lender

By: /s/ Phil Andresen  
Name: Phil Andresen  
Title: Vice President

[Signature Page to Fourth Amendment]

MUFG BANK, LTD.,  
as a Lender

By: /s/ Richard Ferrara  
Name: Richard Ferrara  
Title: Vice President

MUFG BANK, LTD., CANADA BRANCH,  
as a Lender

By: /s/ Samin Atique  
Name: Samin Atique  
Title: Managing Director

[Signature Page to Fourth Amendment]

SANTANDER BANK, N.A.,  
as a Lender

By: /s/ Puiki Lok  
Name: Puiki Lok  
Title: Senior Vice President

[Signature Page to Fourth Amendment]

U.S. BANK NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Kenneth R. Fieler  
Name: Kenneth R. Fieler  
Title: Vice President

[Signature Page to Fourth Amendment]

FULTON BANK, N.A.,  
as a Lender

By: /s/ Michael J. Lessig  
Name: Michael J. Lessig  
Title: Senior Vice President

[Signature Page to Fourth Amendment]

DZ BANK AG,  
as a Lender

By: /s/ Oliver Hildenbrand  
Name: Oliver Hildenbrand  
Title: Director

By: /s/ Alexander Dickhoff  
Name: Alexander Dickhoff  
Title: Vice President

[Signature Page to Fourth Amendment]

FIFTH THIRD BANK, NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Patrick Flaherty  
Name: Patrick Flaherty  
Title: Executive Director

[Signature Page to Fourth Amendment]

FIRST NATIONAL BANK OF PENNSYLVANIA,  
as a Lender

By: /s/ Larry Bardo  
Name: Larry Bardo  
Title: Senior Vice President

[Signature Page to Fourth Amendment]

HSBC BANK USA, NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Kyle O'Reilly  
Name: Kyle O'Reilly  
Title: SVP #23203

[Signature Page to Fourth Amendment]

SVENSKA HANDELSBANKEN AB (PUBL), NEW YORK BRANCH,  
as a Lender

By: /s/ Johan Sander  
Name: Johan Sander  
Title: Vice President

By: /s/ Tamara Hunter  
Name: Tamara Hunter  
Title: VP

[Signature Page to Fourth Amendment]

Annex A

Amended Credit Agreement

[see attached]

CHAR1\1981891v5

Annex A

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Published CUSIP Numbers:  
Deal: 29275VAG3  
Revolver A: 29275VAH1  
Revolver B: 29275VAJ7  
Initial Term Loan: 29275VAK4  
Initial Term A-2 Loan: 29275VAM0  
Term A-3 Loan: 29275VAN8

CREDIT AGREEMENT

Dated as of August 4, 2017

among

ENERSYS,

The Other Borrowers Party Hereto,

The Guarantors Party Hereto,

BANK OF AMERICA, N.A.,  
as Administrative Agent, Swing Line Lender and L/C Issuer

and

The Other Lenders Party Hereto

TD BANK, N.A.

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Co-Syndication Agents

JPMORGAN CHASE BANK, N.A.,  
PNC BANK, NATIONAL ASSOCIATION  
and  
TRUIST BANK,  
as Co-Documentation Agents

CITIZENS BANK, N.A.,  
THE HUNTINGTON NATIONAL BANK,  
MUFG BANK, LTD.  
and  
U.S. BANK NATIONAL ASSOCIATION,  
as Co-Managers

Arranged by:  
BOFA SECURITIES, INC.,  
TD SECURITIES (USA) LLC  
and  
WELLS FARGO SECURITIES, LLC,  
as Joint Lead Arrangers and Joint Bookrunners

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I DEFINITIONS AND ACCOUNTING TERMS</b>	<b>1</b>
<b>1.01 Defined Terms</b>	<b>1</b>
<b>1.02 Other Interpretive Provisions</b>	<b>50</b>
<b>1.03 Accounting Terms</b>	<b>52</b>
<b>1.04 Rounding</b>	<b>53</b>
<b>1.05 Exchange Rates; Currency Equivalents; Rates</b>	<b>53</b>
<b>1.06 Additional Alternative Currencies</b>	<b>54</b>
<b>1.07 Change of Currency</b>	<b>55</b>
<b>1.08 Times of Day</b>	<b>55</b>
<b>1.09 Letter of Credit Amounts</b>	<b>55</b>
<b>1.10 Certain Determinations</b>	<b>56</b>
<b>ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS</b>	<b>56</b>
<b>2.01 Loans</b>	<b>56</b>
<b>2.02 Borrowings, Conversions and Continuations</b>	<b>58</b>
<b>2.03 Letters of Credit</b>	<b>60</b>
<b>2.04 Swing Line Loans</b>	<b>69</b>
<b>2.05 Prepayments</b>	<b>72</b>
<b>2.06 Termination or Reduction of Commitments</b>	<b>75</b>
<b>2.07 Repayment of Loans</b>	<b>76</b>
<b>2.08 Interest</b>	<b>78</b>
<b>2.09 Fees</b>	<b>80</b>
<b>2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate</b>	<b>80</b>
<b>2.11 Evidence of Debt</b>	<b>81</b>
<b>2.12 Payments Generally; Administrative Agent's Clawback</b>	<b>82</b>
<b>2.13 Sharing of Payments by Lenders</b>	<b>84</b>
<b>2.14 Cash Collateral</b>	<b>84</b>
<b>2.15 Defaulting Lenders</b>	<b>85</b>
<b>2.16 Designated Borrowers</b>	<b>86</b>
<b>2.17 Refinancing Facilities</b>	<b>89</b>
<b>2.18 Incremental Facilities</b>	<b>91</b>
<b>2.19 Amend and Extend Transactions</b>	<b>95</b>
<b>2.20 ESG Adjustments</b>	<b>97</b>
<b>ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY</b>	<b>98</b>
<b>3.01 Taxes</b>	<b>98</b>
<b>3.02 Illegality</b>	<b>103</b>
<b>3.03 Inability to Determine Rates</b>	<b>104</b>
<b>3.04 Increased Costs</b>	<b>109</b>
<b>3.05 Compensation for Losses</b>	<b>111</b>
<b>3.06 Mitigation Obligations; Replacement of Lenders</b>	<b>111</b>
<b>3.07 Survival</b>	<b>112</b>
<b>ARTICLE IV CONDITIONS PRECEDENT</b>	<b>112</b>
<b>4.01 Conditions to Effectiveness and Initial Credit Extension</b>	<b>112</b>
<b>4.02 Conditions to all Credit Extensions</b>	<b>114</b>
<b>ARTICLE V REPRESENTATIONS AND WARRANTIES</b>	<b>115</b>
<b>5.01 Company Status</b>	<b>115</b>
<b>5.02 Power and Authority</b>	<b>115</b>
<b>5.03 No Violation</b>	<b>115</b>
<b>5.04 Litigation</b>	<b>115</b>
<b>5.05 Use of Proceeds; Margin Regulations</b>	<b>116</b>
<b>5.06 Governmental Approvals</b>	<b>116</b>
<b>5.07 Investment Company Act</b>	<b>116</b>
<b>5.08 True and Complete Disclosure</b>	<b>116</b>

5.09	Financial Condition; Financial Statements	<del>117</del> <ins>116</ins>
5.10	Security Interests	117
5.11	Compliance with ERISA	<del>118</del> <ins>117</ins>
5.12	Subsidiaries	<del>119</del> <ins>118</ins>
5.13	Intellectual Property	<del>118</del> <ins>118</ins>
5.14	Compliance with Statutes, Agreements, Etc	<del>119</del> <ins>118</ins>
5.15	Environmental Matters	119
5.16	Properties	<del>120</del> <ins>119</ins>
5.17	Labor Relations	<del>120</del> <ins>119</ins>
5.18	Tax Returns and Payments	<del>120</del> <ins>119</ins>
5.19	Insurance	120
5.20	Sanctions	120
5.21	Anti-Corruption Laws	120
5.22	Affected Financial Institution Status	<del>121</del> <ins>120</ins>
5.23	Covered Entity Status	<del>121</del> <ins>120</ins>
5.24	Beneficial Ownership Certification	<del>121</del> <ins>120</ins>

## ARTICLE VI AFFIRMATIVE COVENANTS ~~124~~120

6.01	Information Covenants	<del>124</del> <ins>120</ins>
6.02	Books, Records and Inspections	123
6.03	Insurance	123
6.04	Payment of Taxes	<del>124</del> <ins>123</ins>
6.05	Preservation of Existence	124
6.06	Compliance with Statutes, Etc	124
6.07	Compliance with Environmental Laws	124
6.08	ERISA	<del>125</del> <ins>124</ins>
6.09	Good Repair	125
6.10	Additional Security; Further Assurances	<del>126</del> <ins>125</ins>
6.11	Use of Proceeds	127
6.12	Performance of Obligations	127
6.13	Anti-Corruption Laws; Sanctions	<del>128</del> <ins>127</ins>
6.14	Unrestricted Subsidiaries	<del>128</del> <ins>127</ins>

## ARTICLE VII NEGATIVE COVENANTS 128

7.01	Changes in Business; Fiscal Year	<del>129</del> <ins>128</ins>
7.02	Consolidation; Merger; Sale or Purchase of Assets, Etc	<del>129</del> <ins>128</ins>
7.03	Liens	132
7.04	Indebtedness	135
7.05	Advances; Investments; Loans	<del>140</del> <ins>139</ins>
7.06	Dividends	143
7.07	Transactions with Affiliates	<del>146</del> <ins>145</ins>
7.08	Consolidated Interest Coverage Ratio	146
7.09	Consolidated Total Net Leverage Ratio	<del>147</del> <ins>146</ins>
7.10	Limitation on Voluntary Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; Issuances of Capital Stock, Etc	<del>147</del> <ins>146</ins>
7.11	Limitations on Certain Restrictions on Subsidiaries	<del>148</del> <ins>147</ins>
7.12	Sanctions	<del>149</del> <ins>148</ins>
7.13	Anti-Corruption Laws	149
7.14	Canadian Defined Benefit Pension Plan	149

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES 149

8.01	Events of Default	149
8.02	Application of Funds	<del>152</del> <ins>151</ins>

## ARTICLE IX ADMINISTRATIVE AGENT ~~153~~152

9.01	Appointment and Authority	<del>153</del> <ins>152</ins>
9.02	Rights as a Lender	153
9.03	Exculpatory Provisions	153
9.04	Reliance by Administrative Agent	<del>155</del> <ins>154</ins>

<b>9.05</b>	<b>Delegation of Duties</b>	155
<b>9.06</b>	<b>Resignation of Administrative Agent</b>	155
<b>9.07</b>	<b>Non-Reliance on Administrative Agent and Other Lenders</b>	<b><del>157</del><ins>156</ins></b>
<b>9.08</b>	<b>No Other Duties, Etc</b>	157
<b>9.09</b>	<b>Administrative Agent May File Proofs of Claim</b>	<b><del>158</del><ins>157</ins></b>
<b>9.10</b>	<b>Collateral and Guaranty Matters</b>	<b><del>159</del><ins>158</ins></b>
<b>9.11</b>	<b>Secured Swap Agreements and Secured Cash Management Agreements</b>	159
<b>9.12</b>	<b>Certain ERISA Matters</b>	<b><del>160</del><ins>159</ins></b>
<b>9.13</b>	<b>Recovery of Erroneous Payments</b>	<b><del>161</del><ins>160</ins></b>

ARTICLE X MISCELLANEOUS 161

<b>10.01</b>	<b>Amendments, Etc</b>	161
<b>10.02</b>	<b>Notices; Effectiveness; Electronic Communication</b>	163
<b>10.03</b>	<b>No Waiver; Cumulative Remedies; Enforcement</b>	165
<b>10.04</b>	<b>Expenses; Indemnity; Damage Waiver</b>	166
<b>10.05</b>	<b>Payments Set Aside</b>	168
<b>10.06</b>	<b>Successors and Assigns</b>	168
<b>10.07</b>	<b>Treatment of Certain Information; Confidentiality</b>	174
<b>10.08</b>	<b>Right of Setoff</b>	175
<b>10.09</b>	<b>Interest Rate Limitation</b>	175
<b>10.10</b>	<b>Integration; Effectiveness</b>	<b><del>176</del><ins>175</ins></b>
<b>10.11</b>	<b>Survival of Representations and Warranties</b>	176
<b>10.12</b>	<b>Severability</b>	176
<b>10.13</b>	<b>Replacement of Lenders</b>	176
<b>10.14</b>	<b>Governing Law; Jurisdiction; Etc</b>	177
<b>10.15</b>	<b>Waiver of Jury Trial</b>	<b><del>179</del><ins>178</ins></b>
<b>10.16</b>	<b>No Advisory or Fiduciary Responsibility</b>	179
<b>10.17</b>	<b>Electronic Execution</b>	179
<b>10.18</b>	<b>USA PATRIOT Act and Canadian AML Acts</b>	<b><del>184</del><ins>180</ins></b>
<b>10.19</b>	<b>Judgment Currency</b>	181
<b>10.20</b>	<b>Acknowledgement and Consent to Bail-In of Affected Financial Institutions</b>	181
<b>10.21</b>	<b>Acknowledgement Regarding Any Supported QFCs</b>	<b><del>182</del><ins>181</ins></b>
<b>10.22</b>	<b>Appointment of Company</b>	182

ARTICLE XI GUARANTY **~~183~~182**

<b>11.01</b>	<b>The Guaranty</b>	<b><del>183</del><ins>182</ins></b>
<b>11.02</b>	<b>Obligations Unconditional</b>	183
<b>11.03</b>	<b>Reinstatement</b>	184
<b>11.04</b>	<b>Certain Additional Waivers</b>	184
<b>11.05</b>	<b>Remedies</b>	184
<b>11.06</b>	<b>Rights of Contribution</b>	184
<b>11.07</b>	<b>Guarantee of Payment; Continuing Guarantee</b>	185
<b>11.08</b>	<b>Keepwell</b>	185

## **SCHEDULES**

- 1.01 Existing Letters of Credit
- 2.01 Commitments and Applicable Percentages; L/C Commitment
- 5.12 Subsidiaries
- 5.19 Insurance
- 7.03 Liens Existing on the Second Amendment Effective Date
- 7.04 Indebtedness Existing on the Second Amendment Effective Date
- 7.05 Investments Existing on the Second Amendment Effective Date
- 10.02 Administrative Agent's Office; Certain Addresses for Notices

## **Article I EXHIBITS**

*Form of*

- A-1 Loan Notice
- A-2 Swing Line Loan Notice
- B-1 Revolving Note (Domestic)
- B-2 Revolving Note (Foreign)
- B-3 Initial Term Note
- B-4 Incremental Term Note
- B-5 Swing Line Note
- B-6 Initial Term A-2 Note
- B-7 Term A-3 Note
- C Compliance Certificate
- D Assignment and Assumption
- E Guaranty Supplement
- F Borrower Request and Assumption Agreement
- G Borrower Notice
- H U.S. Tax Compliance Certificates
- I Secured Party Designation Notice
- J Incremental Term Loan Lender Joinder Agreement
- K Solvency Certificate
- L Shareholder Subordinated Note

## CREDIT AGREEMENT

**Article II** This CREDIT AGREEMENT (“Agreement”) is entered into as of August 4, 2017, among ENERSYS, a Delaware corporation (the “Company”), the other Borrowers from time to time party hereto, the Guarantors party hereto, each Lender from time to time party hereto, and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

**Article III** The Company has requested that the Lenders provide credit facilities for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

**Article IV** In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### **ARTICLE I DEFINITIONS AND ACCOUNTING TERMS**

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“2023 Unsecured Notes” means the 5.00% senior notes due 2023, issued pursuant to the First Supplemental Indenture, dated as of April 23, 2015, supplementing that certain Indenture, dated as of April 23, 2015, among the Company, the guarantors named therein and U.S. Bank Trust Company, National Association (as successor to MUFG Union Bank, N.A.), as trustee.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the Closing Date, by which any Person (i) acquires any going business or all or substantially all of the assets of any firm, corporation, partnership, limited liability company or division or other business unit or segment thereof, whether through purchase of assets, merger or otherwise, or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

“Act” has the meaning specified in Section 10.18.

“Administrative Agent” means Bank of America (or any of its designated branch offices or affiliates, including Bank of America acting through its Canada branch for the Initial Term A-2 Loan) in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify the Company and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Revolving A Commitments” means the aggregate Revolving A Commitments of all the Revolving A Lenders. The aggregate principal amount of the Aggregate Revolving A Commitments in effect on the Second Amendment Effective Date is EIGHT HUNDRED TWENTY MILLION DOLLARS (\$820,000,000).

“Aggregate Revolving B Commitments” means the aggregate Revolving B Commitments of all the Revolving B Lenders. The aggregate principal amount of the Aggregate Revolving B Commitments in effect on the Second Amendment Effective Date is THIRTY MILLION DOLLARS (\$30,000,000).

“Aggregate Revolving Commitments” means the Aggregate Revolving A Commitments and/or the Aggregate Revolving B Commitments, as applicable.

“Agreed Currency” means Dollars or any Alternative Currency, as applicable.

“Agreement” means this Credit Agreement.

“Alternative Currency” means each of Canadian Dollars, Euro, Sterling and each other currency (other than Dollars) that is approved in accordance with Section 1.06.

“Alternative Currency Authority” means, with respect to any Alternative Currency, the applicable administrator for the Relevant Rate for such Alternative Currency or any Governmental Authority having jurisdiction over the Administrative Agent or such administrator.

“Alternative Currency Conforming Changes” means, with respect to the use, administration of or any conventions associated with SONIA, EURIBOR, ~~the CDOR Rate~~ or any proposed Successor Rate for an Alternative Currency (other than Canadian Dollars), as applicable, any conforming changes to the definitions of “SONIA”, “EURIBOR”, ~~“CDOR Rate”~~, “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including the definition of “Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice for such Alternative Currency (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate for such Alternative Currency exists, in such other manner of administration as the Administrative Agent (in consultation with the Company) determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Alternative Currency Daily Rate” means, for any day, with respect to any Credit Extension:

(a) denominated in Sterling, the rate per annum equal to SONIA determined pursuant to the definition thereof plus the SONIA Adjustment; and

(b) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a daily rate), the daily rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a);

**Article V** provided, that, (i) if any Alternative Currency Daily Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement and (ii) any change in an Alternative Currency Daily Rate shall be effective from and including the date of such change without further notice.

“Alternative Currency Daily Rate Loan” means a Loan that bears interest at a rate based on the definition of “Alternative Currency Daily Rate.” All Alternative Currency Daily Rate Loans must be denominated in an Alternative Currency.

**“Alternative Currency Equivalent”** means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, by reference to Bloomberg (or such other publicly available service for displaying exchange rates), to be the exchange rate for the purchase of such Alternative Currency with Dollars at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided, that, if no such rate is available, the “Alternative Currency Equivalent” shall be determined by the Administrative Agent or the L/C Issuer, as the case may be, using any reasonable method of determination it deems appropriate in its reasonable discretion (and such determination shall be conclusive absent manifest error).

**“Alternative Currency Loan”** means an Alternative Currency Daily Rate Loan or an Alternative Currency Term Rate Loan, as applicable.

**“Alternative Currency Term Rate”** means, for any Interest Period, with respect to any Credit Extension:

(a) denominated in Euros, the rate per annum equal to the Euro Interbank Offered Rate, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (“EURIBOR”) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(b) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (the “CDOR Rate”) on the first day of such Interest Period (or if such day is not a Business Day, then on the immediately preceding Business Day) with a term equivalent to such Interest Period; and

(c) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a term rate), the term rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a);

**Article VI** provided, that, if any Alternative Currency Term Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

**“Alternative Currency Term Rate Loan”** means a Loan that bears interest at a rate based on the definition of “Alternative Currency Term Rate.” All Alternative Currency Term Rate Loans must be denominated in an Alternative Currency.

**“Applicable Percentage”** means, with respect to any Lender at any time, (a) with respect to such Revolving A Lender’s Revolving A Commitment, the percentage of the Aggregate Revolving A Commitments represented by such Revolving A Lender’s Revolving A Commitment at such time, subject to adjustment as provided in Section 2.15; provided that if the commitment of each Revolving A Lender to make Revolving A Loans and the obligation of the L/C Issuer to make L/C Credit Extensions thereunder have been terminated pursuant to Section 8.01 or if the Aggregate Revolving A Commitments have expired, then the Applicable Percentage of each Revolving A Lender shall be determined based on the Applicable Percentage of such Revolving A Lender most recently in effect, giving effect to any subsequent assignments, (b) with respect to such Revolving B Lender’s Revolving B Commitment, the percentage of the Aggregate Revolving B Commitments represented by such Revolving B Lender’s Revolving B Commitment at such time, subject to adjustment as provided in Section 2.15, provided that if the commitment of each Revolving B Lender to make Revolving B Loans and the obligation of the L/C Issuer to make L/C Credit Extensions thereunder have been terminated pursuant to Section 8.01 or if the Aggregate Revolving B Commitments have expired, then the Applicable Percentage of each Revolving B Lender shall be determined based on the Applicable Percentage of such Revolving B Lender most

recently in effect, giving effect to any subsequent assignments, (c) with respect to such Lender's portion of the outstanding Initial Term Loan at any time, the percentage (carried out to the ninth decimal place) of the outstanding principal amount of the Initial Term Loan held by such Lender at such time, subject to adjustment as provided in Section 2.15, (d) with respect to such Lender's portion of the outstanding Initial Term A-2 Loan at any time, the percentage (carried out to the ninth decimal place) of the outstanding principal amount of the Initial Term A-2 Loan held by such Lender at such time, subject to adjustment as provided in Section 2.15, (e) with respect to such Lender's Term A-3 Loan Commitments and/or such Lender's portion of the outstanding Term A-3 Loan, as applicable, (i) at any time during the Term A-3 Loan Availability Period, the percentage (carried out to the ninth decimal place) of the aggregate Term A-3 Loan Commitments and the outstanding Term A-3 Loan represented by such Lender's Term A-3 Loan Commitment and the outstanding principal amount of the Term A-3 Loan held by such Lender at such time and (ii) at any time thereafter, the percentage (carried out to the ninth decimal place) of the outstanding principal amount of the Term A-3 Loan held by such Lender at such time, and (f) with respect to such Lender's portion of any outstanding Incremental Term Loan (other than the Term A-3 Loan) at any time, the percentage (carried out to the ninth decimal place) of the outstanding principal amount of such Incremental Term Loan held by such Lender at such time, subject to adjustment as provided in Section 2.15. The Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01, in the Assignment and Assumption pursuant to which such Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.02 or 2.17, as applicable.

“Applicable Rate” means with respect to:

(a) any Incremental Term Loan made pursuant to any Incremental Term Loan Lender Joinder Agreement, the percentage(s) per annum set forth in such Incremental Term Loan Lender Joinder Agreement;

(b) Revolving Loans, Swing Line Loans, the Initial Term Loan, the Initial Term A-2 Loan, the Term A-3 Loan, the Commitment Fee, the Term A-3 Loan Ticking Fee, and Letter of Credit Fees, the following percentages per annum, based upon the Consolidated Total Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.01(c):

Pricing Level	Consolidated Total Net Leverage Ratio	Revolving Loans, Swing Line Loans, Initial Term Loan, and Initial Term A-2 Loan		Term A-3 Loan		Commitment Fee and Term A-3 Loan Ticking Fee
		LIBOR Rate Term SOFR Loans, Alternative Currency Loans and Letter of Credit Fees	Base Rate Loans and Canadian Prime Rate Loans	Term SOFR Loans	Base Rate Loans	
1	< 1.25 to 1.00	1.125%	0.125%	1.375%	0.375%	0.175%
2	≥ 1.25 to 1.00 but < 2.00 to 1.00	1.250%	0.250%	1.500%	0.500%	0.200%
3	≥ 2.00 to 1.00 but < 2.50 to 1.00	1.500%	0.500%	1.750%	0.750%	0.250%
4	≥ 2.50 to 1.00 but < 3.25 to 1.00	1.750%	0.750%	2.000%	1.000%	0.300%
5	≥ 3.25 to 1.00 but < 4.00 to 1.00	2.000%	1.000%	2.250%	1.250%	0.325%
6	≥ 4.00 to 1.00	2.250%	1.250%	2.500%	1.500%	0.350%

**Article VII** Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Total Net Leverage Ratio shall become effective as of the first Business Day immediately

following the date a Compliance Certificate is delivered pursuant to Section 6.01(c); provided that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 5 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered. Subject to the proviso in the immediately preceding sentence, the Applicable Rate in effect from the Third Amendment Effective Date through the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.01(c) for the fiscal quarter of the Company ending October 2, 2022 shall be determined based upon Pricing Level 4.

**Article VIII** Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

**“Applicable Time”** means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

**“Approved Fund”** means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**“Arrangers”** means BofA Securities, TD Securities (USA) LLC and Wells Fargo Securities, LLC, in their capacities as joint lead arrangers and joint bookrunners.

**“Asset Sale”** means any Disposition by the Company or any of its Restricted Subsidiaries made pursuant to Section 7.02(e), (s), (u), (x) or (aa) to any Person other than the Company or any other Restricted Subsidiary of any asset (including, without limitation, any capital stock or other Equity Interests of another Person, but excluding the sale by such Person of its own Equity Interests) of the Company or such Restricted Subsidiary; provided, that, any Immaterial Asset Sale shall not constitute an “Asset Sale”.

**“Assignment and Assumption”** means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

**“Attorney Costs”** means and includes all reasonable and documented fees, expenses and disbursements of any law firm or other external counsel.

**“Attributable Indebtedness”** means, on any date, (a) in respect of any Synthetic Lease Obligation of any Person, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease and (b) in respect of any Capitalized Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

**“Audited Financial Statements”** means the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended March 31, 2021, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Company and its Subsidiaries, including the notes thereto.

**“Authorized Officer”** means, with respect to (a) delivering financial information and officer’s certificates pursuant to this Agreement, the chief financial officer, the chief executive officer, the chief operating officer, the corporate controller, any treasurer or other financial officer of the Company and (b) any other matter in connection with this Agreement or any other Loan Document, any officer (or a person or persons so designated by such officer) of the applicable Credit Party, in each case to the extent reasonably acceptable to the Administrative Agent, or any other officer or employee of the applicable

Credit Party designated in an incumbency certificate delivered to the Administrative Agent or pursuant to an agreement between the applicable Credit Party and the Administrative Agent. Any document delivered hereunder that is signed by an Authorized Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

**“Availability Period”** means, (a) with respect to the Revolving A Commitments, the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination of the Aggregate Revolving A Commitments in their entirety pursuant to Section 2.06, and (iii) the date of termination of the commitment of each Revolving A Lender to make Revolving A Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions under the Revolving A Tranche pursuant to Section 8.01 and (b) with respect to the Revolving B Commitments, the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination of the Aggregate Revolving B Commitments in their entirety pursuant to Section 2.06, and (iii) the date of termination of the commitment of each Revolving B Lender to make Revolving B Loans and the obligation of the L/C Issuer to make L/C Credit Extensions under the Revolving B Tranche pursuant to Section 8.01.

**“Available Amount”** means, at any date, an amount equal to (a) the sum of (i) an amount, not less than zero in the aggregate, equal to 50% of Consolidated Net Income of the Company and its Restricted Subsidiaries for the period (taken as one accounting period) from April 1, 2017 to the end of the fiscal quarter most recently ended in respect of which a Compliance Certificate has been delivered as required hereunder plus (ii) on the date of receipt by the Company after the Closing Date of Net Cash Proceeds from any sale or issuance of common stock or Qualified Preferred Stock of the Company or any contribution to the common equity capital of the Company, the amount of such Net Cash Proceeds to the extent such Net Cash Proceeds do not increase the Available JV Basket Amount plus (iii) the Net Cash Proceeds received by the Borrowers and their respective Restricted Subsidiaries of Dispositions of Investments made using the Available Amount to the extent such Net Cash Proceeds are not required to prepay the Loans pursuant to Section 2.05(b) in an amount not to exceed the amount of the original Investment plus (iv) returns received in cash or Cash Equivalents by the Borrowers and their respective Restricted Subsidiaries on Investments made using the Available Amount (including Investments in Unrestricted Subsidiaries) in an amount not to exceed the amount of the original Investment plus (v) any Declined Amounts minus (b) the sum of the amount of (i) any Investment made (or deemed made) pursuant to Section 7.05(p) plus (ii) any Dividend made in reliance on Section 7.06(e), in each case, as of such date.

**“Available JV Basket Amount”** means, on any date of determination, an amount equal to the sum of (a) the greater of (i) \$325,000,000 and (ii) 7.50% of Consolidated Total Assets, plus (b) on the date of receipt by the Company after the Closing Date of Net Cash Proceeds from any sale or issuance of common stock or Qualified Preferred Stock of the Company or any contribution to the common equity capital of the Company, the amount of such Net Cash Proceeds to the extent such Net Cash Proceeds do not increase the Available Amount minus (c) the aggregate amount of Investments made (including for such purpose the fair market value of any assets contributed to any Joint Venture or Unrestricted Subsidiary (in each case, as determined in good faith by the Company), net of Indebtedness and, without duplication, Capitalized Lease Obligations assigned to, and assumed by, the respective Joint Venture or Unrestricted Subsidiary in connection therewith) pursuant to Section 7.05(n) after the Closing Date, minus (d) the aggregate amount of Indebtedness or other obligations (whether absolute, accrued, contingent or otherwise and whether or not due) of any Joint Venture or Unrestricted Subsidiary for which the Company or any of its Restricted Subsidiaries (other than the respective Joint Venture or Unrestricted Subsidiary, as applicable) is liable, minus (e) all payments made by the Company or any of its Restricted Subsidiaries (other than the respective Joint Venture or Unrestricted Subsidiary, as applicable) in respect of Indebtedness or other obligations of the respective Joint Venture or Unrestricted Subsidiary, as applicable, (including, without limitation, payments in respect of obligations described in preceding clause(d)) after the Closing Date, plus (f) the amount of any increase to the Available JV Basket Amount made after the Closing Date in accordance with the provisions of Section 7.05(n).

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Canadian Benchmark, as applicable, (a) if the then-current Canadian Benchmark is a term rate, any tenor

for such Canadian Benchmark that is or may be used for determining the length of an Interest Period or (b) otherwise, any payment period for interest calculated with reference to such Canadian Benchmark, as applicable, pursuant to this Agreement as of such date.

“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, rule, 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 of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Effective Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate” and (c) (+) with respect to the Term A-3 Loan, Term SOFR plus 1% or (ii) for all other purposes except with respect to the Term A-3 Loan, the LIBOR Rate plus 1%, in each case, subject to the interest rate floors set forth therein; provided, that, if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such “prime rate” announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03, then the Base Rate shall be the greater of clauses (a) and (b) of this definition and shall be determined without reference to clause (c) of this definition.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“Benchmark” means, initially, LIBOR; provided, that, if a replacement of the Benchmark has occurred pursuant to Section 3.03(b) then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark <Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof. >

“Benchmark Replacement” means:

(a) <for purposes of Section 3.03(b)(i), the first alternative set forth >below <that can be determined by the Administrative Agent: (i) the sum of: (A) Term >SOFR and (B) 0.03839% (3.839 basis points) for an Available Tenor of one week's duration, 0.11448% (11.448 basis points) for an Available Tenor of one month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, 0.42826% (42.826 basis points) for an Available Tenor of six months' duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve months' duration, or (ii) the sum of: (A) Daily Simple SOFR and (B) 0.11448% (11.448 basis points); provided, that, if initially LIBOR is replaced with the rate contained in clause (ii) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrowers and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (i) above; and

**(b)** <for purposes of Section 3.03(b)(ii), the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrowers as the replacement ><Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by >a Relevant Governmental Body, for Dollar-denominated syndicated credit facilities at such time;

~~provided, that, (x) if the Benchmark Replacement as determined pursuant to clause (a) or (b) of this definition would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents, and (y) any Benchmark Replacement shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such ><Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent>~~

**Benchmark Replacement Conforming Changes** means, with respect to 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 “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 breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such ><Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such ><Benchmark Replacement exists, in such other manner of administration as the Administrative Agent >(in consultation with the Company in connection with any Benchmark Replacement determined pursuant to clause (b) of the definition of “Benchmark Replacement”) <decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents)>

**Benchmark Transition Event** means, with respect to any then-current Benchmark other than LIBOR<, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current >Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that <, at the time of such statement or publication, there is no successor administrator that >is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

**Beneficial Ownership Certification** means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

**Beneficial Ownership Regulation** means 31 C.F.R. § 1010.230.

**Benefit Plan** means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

**BHC Act Affiliate** 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.

**Board** means the Board of Governors of the Federal Reserve System of the United States.

**BofA Securities** means BofA Securities, Inc.

**Borrower** means the Company and any Designated Borrower that is identified on Schedule 5.12 as a Borrower or becomes a Borrower under the terms of Section 2.16.

“Borrower Materials” has the meaning specified in Section 6.01.

“Borrower Request and Assumption Agreement” has the meaning specified in Section 2.16(a).

“Borrowing” means each of the following, as the context may require: (a) a borrowing of Swing Line Loans pursuant to Section 2.04, and (b) a borrowing consisting of simultaneous Loans of the same Type, in the same currency and, in the case of ~~LIBOR Rate Loans~~, Term SOFR Loans, and Alternative Currency Term Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Obligations denominated in Dollars is located and:

~~(a) if such day relates to any interest rate settings as to a LIBOR Rate Loan, any fundings, disbursements, settlements and payments in Dollars in respect of any such LIBOR Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such LIBOR Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;~~

~~(ba) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Alternative Currency Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Alternative Currency Loan, means a TARGET Day;~~

~~(eb) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Sterling, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom;~~

~~(dc) if such day relates to any fundings, disbursements, settlements and payments in Canadian Dollars in respect of a Loan denominated in Canadian Dollars, or any other dealings in Canadian Dollars to be carried out pursuant to this Agreement in respect of any such Loan, means any such day on which banks are open for foreign exchange business in Toronto, Ontario; and~~

~~(ed) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Canadian Dollars, Sterling or Euro in respect of an Alternative Currency Loan denominated in a currency other than Canadian Dollars, Sterling or Euro, or any other dealings in any currency other than Canadian Dollars, Sterling or Euro to be carried out pursuant to this Agreement in respect of any such Alternative Currency Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.~~

“Canadian AML Acts” means applicable Canadian law regarding anti-money laundering, anti-terrorist financing, government sanction and “know your client” matters, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

“Canadian Benchmark” means, initially, the CDOR Rate; provided, that, if a replacement of the Canadian Benchmark has occurred pursuant to Section 3.03(b), then “Canadian Benchmark” means the applicable Canadian Benchmark Replacement to the extent that such Canadian Benchmark >Replacement has replaced such prior benchmark rate. Any reference to “<Canadian Benchmark>” shall include, as applicable, the published component used in the calculation thereof.<

“Canadian Benchmark Replacement” means, for any Available Tenor: (a) >for purposes of Section 3.03(b)(i), the first alternative set forth <as follows >that can be determined by the Administrative Agent: (i) the sum of: (A) Term <CORRA and (B) 0.29547% (29.547 basis points) for an Available Tenor of one-month’s duration, and 0.32138% (32.138 basis points) for an Available Tenor of three-months’ duration, or (ii) the sum of: (A) Daily Compounded CORRA and (B) 0.29547% (29.547 basis

points) for an Available Tenor of one-month's duration, and 0.32138% (32.138 basis points) for an Available Tenor of three-months' duration; and (b) >for purposes of Section 3.03(b)(ii), the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrowers as the replacement <for such Available Tenor of such Canadian >Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by <the Relevant Canadian Governmental Body, for Canadian dollar-denominated syndicated credit facilities at such time; provided, that, if the Canadian Benchmark Replacement as determined pursuant to clause (a) or clause (b) of this definition above would be less than zero percent (0%), the Canadian Benchmark Replacement will be deemed to be zero percent (0%) for the purposes of this Agreement and the other Loan Documents. Any Canadian Benchmark >Replacement shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such <Canadian >Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.<

"Canadian Benchmark Replacement Conforming Changes" means, with respect to any Canadian Benchmark >Replacement, any technical, administrative or operational changes (including changes to the definition of "<Alternative Currency Daily Rate", the definition of "Alternative Currency Term Rate", the definition of "Business Day", the definition of "Canadian Prime Rate", the definition of "CDOR Rate", the definition 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 breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such <Canadian >Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such <Canadian >Benchmark Replacement exists, in such other manner of administration as the Administrative Agent >>decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).<

"Canadian Benchmark Transition Event" means, with respect to any then-current Canadian Benchmark other than the CDOR Rate>, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current <Canadian Benchmark, the regulatory supervisor for the administrator of such Canadian Benchmark, any Governmental Authority with jurisdiction over such administrator for such Canadian Benchmark, or the Bank of Canada, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Canadian Benchmark, 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 Canadian Benchmark or (b) all Available Tenors of such Canadian Benchmark are or will no longer be representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored.

"Canadian Borrower" means Alpha Technologies Ltd., a corporation amalgamated under the laws of the Province of British Columbia.

"Canadian Defined Benefit Pension Plan" means a Foreign Pension Plan that contains or has ever contained a "defined benefit provision" as such term is defined in Section 147.1(1) of the Income Tax Act (Canada).

"Canadian Dollar" or "C\$" means the lawful currency of Canada.

"Canadian Prime Rate" means, for any day, a fluctuating rate of interest per annum equal to the greater of (a) the per annum rate of interest quoted or established as the "prime rate" of the Administrative Agent which it quotes or establishes for such day as its reference rate of interest in order to determine interest rates for commercial loans in Canadian Dollars in Canada to its Canadian borrowers; and (b) the average CDOR Rate for a 30-day term plus ½ of 1% per annum, adjusted automatically with each quoted or established change in such rate, all without the necessity of any notice to any Borrower or any other

Person. Such prime rate is based on various factors including cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate shall take effect at the opening of business on the day specified in the public announcement of such change. Notwithstanding anything to the contrary contained herein, if the Canadian Prime Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Canadian Prime Rate Loan” means any portion of the Initial Term A-2 Loan that bears interest based on the Canadian Prime Rate. All Canadian Prime Rate Loans shall be denominated in Canadian Dollars.

“Capital Expenditures” means, with respect to any Person, for any period, all expenditures by such Person which should be capitalized in accordance with GAAP during such period and are, or are required to be, included in property, plant or equipment reflected on the consolidated balance sheet of such Person (including, without limitation, expenditures for maintenance and repairs which should be so capitalized in accordance with GAAP) and, without duplication, the amount of all Capitalized Lease Obligations incurred by such Person during such period.

“Capital Lease,” as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee which, in conformity with GAAP (determined as provided in Section 1.03), is accounted for as a capital lease on the balance sheet of that Person.

“Capitalized Lease Obligations” means all obligations under Capital Leases of the Company and its Restricted Subsidiaries, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP; provided, however, all obligations of any Person that are or would have been treated as operating leases (including for avoidance of doubt, any network lease or any Operating IRU) for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01(a) and 6.01(b).

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Revolving A Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means (a) demand deposit accounts held in accounts denominated in U.S. Dollars and, in the case of any of Foreign Subsidiaries, such local currencies held in accounts denominated in Euros, Chinese Yuan, Singapore Dollars, Rubles, Canadian Dollars, Sterling, Swiss Franc and/or such other currencies from time to time, (b) securities issued or directly fully guaranteed or insured by the governments of the United States, The Netherlands, Great Britain, France or Germany or any agency or instrumentality thereof (provided that the full faith and credit of the respective such government is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (c) certificates of deposit and eurodollar time deposits with maturities of twelve months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding twelve months and overnight bank deposits, in each case with any domestic commercial bank or commercial bank of a foreign country recognized by the United States, in each case (i) having capital and surplus in excess of \$500,000,000 (or the foreign currency equivalent thereof) and (ii) the outstanding debt of which is rated “A” (or similar equivalent thereof) or higher by at least one nationally recognized statistical rating organization (as defined under Rule 436 under the Securities Act of 1933) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor; provided that up to \$15,000,000 of cash equivalents of the type described in this clause (c) shall be deemed to be “Cash Equivalents” if all

the requirements of this clause (c) (other than preceding clause (ii)) are satisfied, (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above and (e) commercial paper having one of the two highest ratings obtainable from S&P or Moody's and in each case maturing within twelve months after the date of acquisition. Furthermore, with respect to Foreign Subsidiaries, Cash Equivalents shall include bank deposits (and investments pursuant to operating account agreements) maintained with various local banks in the ordinary course of business consistent with past practices of the Company's Foreign Subsidiaries.

**Cash Management Agreement** means any agreement to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

**Cash Management Bank** means any Person that (a) at the time it enters into a Cash Management Agreement, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, (b) in the case of any Cash Management Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within 30 days thereafter, a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent and a party to a Cash Management Agreement or (c) within 30 days after the time it enters into the applicable Cash Management Agreement, becomes a Lender, the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case, in its capacity as a party to such Cash Management Agreement.

**CDOR Rate** has the meaning specified in clause (b) of the definition of "Alternative Currency Term Rate".

**CFC** means a Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code and each Subsidiary of any such "controlled foreign corporation".

**Change in Control** means (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934) is or shall become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Securities Exchange Act of 1934), directly or indirectly, of greater than 35% of the economic or voting interests in the Company's capital stock or (b) the Company ceases to own (directly or indirectly) 100% of the outstanding shares of the voting stock of each Designated Borrower.

**Change in Law** means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (ii) 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, implemented or issued.

**Closing Date** means August 4, 2017.

**CME** means CME Group Benchmark Administration Limited.

**Code** means the United States Internal Revenue Code of 1986, as amended.

**Collateral** means all "Collateral" or other similar term referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be

subject to Liens in favor of the Administrative Agent, for the benefit of itself and the other holders of the Obligations and excluding, for the avoidance of doubt, any Excluded Property.

“Collateral Documents” means a collective reference to the Security Agreement and other collateral documents as may be executed and delivered by any Credit Party pursuant to the terms of Section 6.10 or any of the Loan Documents.

“Collateral Release Period” mean any period during which (i) the corporate credit rating of the Company is at least BBB- (with stable or better outlook) from S&P and at least Baa3 (with stable or better outlook) from Moody’s, (ii) no Default or Event of Default then exists or is continuing and (iii) no Incremental Equivalent Debt, Incremental Term Loans, Refinancing Notes, Refinancing Junior Loans and/or any other Indebtedness for borrowed money (other than the Obligations) with an aggregate outstanding principal amount in excess of \$75,000,000 (or any Permitted Refinancing of any of the foregoing) is secured by a Lien on any assets of any Credit Party (unless such Liens are contemporaneously released) and is then outstanding. Each Collateral Release Period shall (x) commence upon (a) the Company’s satisfaction of the conditions set forth in the immediately preceding sentence and (b) certification by the Company thereof and (y) shall terminate on the first date following the commencement of such Collateral Release Period on which the Company ceases to satisfy any of the above conditions.

“Commitment” means a Term Loan Commitment or a Revolving Commitment, as the context may require.

“Commitment Fee” has the meaning specified in Section 2.09(a).

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Communication” means this Agreement, any Loan Document, and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

“Company” has the meaning specified in the introductory paragraph hereto.

“Competitor” means any competitor of the Company or any of its Subsidiaries that is in the same or a similar line of business as the Company or any of its Subsidiaries and is designated in writing from time to time by the Company to the Administrative Agent.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“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 Debt” means, at any time, the difference of (a) the sum of (without duplication) (i) the principal amount of all Indebtedness of the Company and its Restricted Subsidiaries (on a consolidated basis) as would be required to be reflected as debt or capital leases on the liability side of a consolidated balance sheet of the Company and its Restricted Subsidiaries in accordance with GAAP, (ii) all Indebtedness of the Company and its Restricted Subsidiaries of the type described in clause (c) of the definition of Indebtedness, (iii) the aggregate amount of Foreign Receivables Indebtedness and Receivables Indebtedness of the Company and its Restricted Subsidiaries outstanding at such time that is in excess of \$150,000,000, and (iv) Attributable Indebtedness in respect of Synthetic Lease Obligations (but excluding Attributable Indebtedness in respect of or arising in connection with an IRB Sale-Leaseback Transaction) at such time minus (b) the aggregate amount of Unrestricted Cash of the Credit Parties and the Foreign Subsidiaries at such time to the extent same would be reflected on a consolidated balance sheet of the Company if same were prepared on such date. For the avoidance of doubt, Excluded Securitization Transactions shall not constitute “Consolidated Debt”.

**"Consolidated EBIT"** means, for any period, the Consolidated Net Income of the Company and its Restricted Subsidiaries plus, in each case to the extent actually deducted in determining Consolidated Net Income for such period, consolidated interest expense of the Company and its Restricted Subsidiaries and provision for income taxes, adjusted to exclude for such period (a) any extraordinary gains or losses, (b) gains or losses from sales of assets other than inventory sold in the ordinary course of business, (c) any write-downs of non-current assets relating to impairments or the sale of non-current assets or (d) any non-cash expenses incurred in connection with stock options, stock appreciation rights or similar equity rights.

**"Consolidated EBITDA"** means for any period, Consolidated EBIT, adjusted by (a) adding thereto (in each case to the extent deducted in determining Consolidated Net Income for such period and not already added back in determining Consolidated EBIT), with respect to the Company and its Restricted Subsidiaries, the amount of, without duplication, (i) all amortization and depreciation that were deducted in arriving at Consolidated EBIT for such period, (ii) any non-cash charges in such period to the extent that such non-cash charges do not give rise to a liability that would be required to be reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries and so long as no cash payments or cash expenses will be associated therewith (whether in the current period or for any other period), (iii) fees and expenses incurred by the Company and its Restricted Subsidiaries during such period in connection with the Transaction, the consummation of a Permitted Acquisition or any other Investment or Disposition, the issuance of any Equity Interests, any actual or proposed incurrence of Indebtedness or the Investment in any Joint Venture or Unrestricted Subsidiary, in each case permitted hereunder, (iv) cash charges not to exceed \$10,000,000 incurred in connection with the termination of Swap Agreements during such period, (v) any non-recurring charges, costs, fees and expenses directly incurred or paid directly as a result of discontinuing operations, (vi) any other extraordinary, unusual or non-recurring cash charges or expenses incurred outside the ordinary course of business, provided that the aggregate amount added pursuant to this clause (vi), clause (vii) below and clause (viii) below shall not exceed 25% of Consolidated EBITDA (determined prior to giving effect to such add-backs) for such period, (vii) the amount of cost savings and synergies projected by the Company in good faith to be realized as a result of any Acquisition permitted hereunder within the first four consecutive fiscal quarters following the consummation of such Acquisition, calculated as though such cost savings and synergies had been realized on the first day of such period and net of the amount of actual benefits received during such period from such Acquisition provided, that, (A) such cost savings or synergies are reasonably identifiable and factually supportable and (B) the aggregate amount added pursuant to this clause (vii), clause (vi) above and clause (viii) below shall not exceed 25% of Consolidated EBITDA (determined prior to giving effect to such add-backs) for such period, (viii) restructuring and related charges, integration costs, business optimization expenses and charges attributable to, and payments of, legal settlements, fines, judgments or orders and severance, relocation costs, facilities start-up costs, recruiting fees, signing costs, retention or completion bonuses and transition costs, provided that the aggregate amount added pursuant to this clause (viii), clause (vi) above and clause (vii) above shall not exceed 25% of Consolidated EBITDA (determined prior to giving effect to such add-backs) for such period, (ix) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Preferred Stock), (x) any non-cash impairment charge or asset write-off or write-down (other than write-offs or write-downs of current assets) in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, (xi) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so excluded to the extent not so reimbursed within such 365 days) and (b) subtracting therefrom, to the extent included in arriving at Consolidated EBIT for such period, with respect to the Company and its Restricted Subsidiaries, the amount of, without duplication, (i) the amount of non-cash gains during such period, (ii) any income directly attributable to discontinued operations.

**“Consolidated Interest Coverage Ratio”** means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the most recently completed four fiscal quarters to (b) Consolidated Net Interest Expense for such period.

**“Consolidated Net Income”** means, for any period, the net after tax income (or loss) of the Company and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP; provided that in determining Consolidated Net Income of the Company and its Restricted Subsidiaries (a) the net income of any Person which is not a Restricted Subsidiary of the Company or is accounted for by the Company by the equity method of accounting shall be included only to the extent of the payment of dividends or disbursements by such Person to the Company or a wholly-owned Restricted Subsidiary of the Company during such period, (b) except for determinations expressly required to be made on a Pro Forma Basis, the net income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary or all or substantially all of the property or assets of such Person are acquired by a Restricted Subsidiary shall be excluded from such determination, and (c) the net income of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of such net income is not at the time permitted by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Restricted Subsidiary shall be excluded from such determination. Consolidated Net Income shall be calculated without regard to (i) the cumulative effect of a change in accounting principles during such period and (ii) effects of adjustments pursuant to GAAP resulting from the application of application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items).

**“Consolidated Net Interest Expense”** means, for any period, (a) the total consolidated interest expense of the Company and its Restricted Subsidiaries for such period (calculated without regard to any limitations on payment thereof) plus, to the extent not included above, the Foreign Receivables Facilities Financing Costs and the Receivables Facilities Financing Costs for such period, adjusted to exclude (to the extent same would otherwise be included in the calculation above in this clause (a)) (i) the amortization of any deferred financing costs for such period, (ii) non-cash interest expense (including amortization of discount and interest which will be added to, and thereafter become part of, the principal or liquidation preference of the respective Indebtedness or Preferred Stock through a pay-in-kind feature or otherwise, but excluding all regularly accruing interest expense which will be payable in cash in a subsequent period) payable in respect of any Indebtedness or Preferred Stock and (iii) dividends on Qualified Preferred Stock in the form of additional Qualified Preferred Stock, plus (b) without duplication, that portion of Capitalized Lease Obligations of the Company and its Restricted Subsidiaries on a consolidated basis representing the interest factor for such period minus (c) the cash portion of interest income of the Company and its Restricted Subsidiaries on a consolidated basis for such period (for this purpose, excluding any cash interest income received by any non-wholly owned Restricted Subsidiary to the same extent as such amount, if representing net income, would be excluded from Consolidated Net Income pursuant to the proviso to the definition thereof), all as determined in accordance with GAAP (subject to the express requirements set forth above).

**“Consolidated Secured Net Leverage Ratio”** means, as of any date of determination, the ratio of (a) Consolidated Debt (other than Consolidated Debt of the Company and its Restricted Subsidiaries that is not secured by a Lien on any property of the Company or any Restricted Subsidiary) of the Company and its Restricted Subsidiaries as of such date to (b) Consolidated EBITDA for the most recently completed four fiscal quarters.

**“Consolidated Total Assets”** means, as of any date of determination, total assets of the Company and its Restricted Subsidiaries on a consolidated basis determined in accordance with GAAP, as shown on the most recent consolidated balance sheet of the Company delivered (or required to be delivered) pursuant to Section 6.01(a) or 6.01(b).

**“Consolidated Total Net Leverage Ratio”** means, as of any date of determination, the ratio of (a) Consolidated Debt of the Company and its Restricted Subsidiaries as of such date to (b) Consolidated EBITDA for the most recently completed four fiscal quarters.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlled”** has the meaning correlative thereto.

**“Corporate Restructuring”** means (a) the transfer of any Foreign Subsidiary (or any Equity Interests or assets in any Foreign Subsidiary) to any other Foreign Subsidiary or Domestic Subsidiary, (b) the transfer by any Foreign Subsidiary of any Domestic Subsidiary (or Equity Interests or assets in any Domestic Subsidiary) to any other Foreign Subsidiary or Domestic Subsidiary, (c) the formation of any Foreign Subsidiary, (d) the merger or consolidation of any Subsidiary with a Domestic Subsidiary (provided that if a Borrower is party to such transaction, such Borrower shall be the surviving entity), (e) the merger or consolidation of any Foreign Subsidiary with any Foreign Subsidiary (provided that if a Borrower is party to such transaction, such Borrower shall be the surviving entity) and (f) the merger or consolidation of any Subsidiary with any Domestic Credit Party (provided that (i) if the Company is a party to such transaction, the Company shall be the surviving entity, (ii) if a Borrower is party to such transaction, such Borrower shall be the surviving entity and (iii) if a Guarantor (other than Esfinco, LLC, so long as the Credit Parties have not transferred any material assets to Esfinco, LLC, after the Closing Date) is a party to such transaction, such Guarantor shall be the surviving entity) in each case, in connection with bona fide tax planning activities so long as (x) taken as a whole, the value of the Collateral securing the Obligations is not materially reduced and (y) the security interests of the Administrative Agent, on behalf of the Lenders, in the Collateral, taken as a whole, are not materially impaired, in each case, as reasonably determined by the Administrative Agent in consultation with the Company.

**“CORRA”** means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator).

**“Covered Entity”** means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**“Covered Party”** has the meaning set forth in [Section 10.21](#).

**“Credit Extension”** means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

**“Credit Parties”** means, collectively, each Borrower and each Guarantor.

**“Daily Compounded CORRA”** means, for any day, CORRA with interest accruing on a compounded daily basis, with the methodology and conventions for this rate being established by the Administrative Agent.

**“Daily Simple SOFR”** means, with respect to any applicable determination date, the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

**“Debt Issuance”** means the issuance by the Company or any Restricted Subsidiary of any Indebtedness other than Indebtedness permitted under [Section 7.04](#).

**“Debt Repurchase”** has the meaning provided in [Section 7.10\(d\)](#).

**“Debtor Relief Laws”** means the Bankruptcy Code of the United States, the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the Winding-Up and Restructuring Act (Canada), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Amount” has the meaning set forth in Section 2.05(d).

“Declining Lender” has the meaning set forth in Section 2.05(d).

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

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that (A) with respect to a ~~LIBOR Rate Loan, a~~ Term SOFR Loan, or an Alternative Currency Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, in each case to the fullest extent permitted by applicable Laws, and (B) with respect to a Canadian Prime Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, in each case to the fullest extent permitted by applicable Laws; and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“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.

“Defaulting Lender” means, subject to Section 2.15(d), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Company, the Administrative Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity 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 any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(d)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Company, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

**“Designated Borrower”** means any Restricted Subsidiary that has been designated as a Borrower pursuant to the terms hereof and that has not ceased to be a Borrower pursuant to the terms hereof. For the avoidance of doubt, the Canadian Borrower shall constitute a Designated Borrower.

**“Designated Jurisdiction”** means any country, region or territory to the extent that such country, region or territory itself is the subject of any comprehensive Sanction.

**“Designated Non-Cash Consideration”** means the fair market value (as determined by the Company in good faith) of non-cash consideration received by the Company or a Restricted Subsidiary in connection with a Disposition pursuant to Section 7.02(e) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer of the Company, setting forth the basis of such valuation (which amount will be reduced by the amount of cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to cash or Cash Equivalents).

**“Disposition”** has the meaning set forth in Section 7.02.

**“Disqualified Institutions”** means (a) any Competitor that has been identified by legal name in writing to the Administrative Agent following the Second Amendment Effective Date (such list, as supplemented from time to time in accordance with this definition, the “DQ List”), (b) any owner of the Equity Interests of any Competitor identified pursuant to clause (a), but only to the extent such Person has been identified by legal name on the DQ List delivered to the Administrative Agent, or (c) any Affiliate of any Competitor identified pursuant to clause (a) that, in each case, is obviously (based solely on the similarity of the legal name of such Affiliate to the name of such Competitor) an Affiliate of such Competitor; provided, that, (i) the foregoing shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation in the Loans or Commitments under this Agreement to the extent that any such Person was not a Disqualified Institution at the time of the applicable assignment or participation, as the case may be and (ii) “Disqualified Institutions” shall exclude any Person that the Company has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent and the Lenders from time to time.

**“Disqualified Preferred Stock”** means, as to any Person, any Preferred Stock of such Person which is not Qualified Preferred Stock.

**“Dividends”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of the Company or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests of the Company or any Restricted Subsidiary or on account of any return of capital to the Company’s or its Restricted Subsidiaries’ stockholders, partners or members (or the equivalent Person thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

**“Dollar”** and **“\$”** mean lawful money of the United States.

**“Dollar Equivalent”** means, for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Alternative Currency last provided (either by publication or otherwise provided to the Administrative Agent or the L/C Issuer, as applicable) by the applicable Bloomberg source (or such other publicly available source for displaying exchange rates) on the date that is two (2) Business Days immediately preceding the date of determination (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent or the L/C Issuer, as applicable using any method of determination it deems appropriate in its reasonable discretion), and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent or the L/C Issuer, as applicable, using any method of determination it deems appropriate in its reasonable discretion. Any

determination by the Administrative Agent or the L/C Issuer pursuant to clauses (b) or (c) pursuant to this definition shall be conclusive absent manifest error.

“Domestic Borrower” means the Company and each Designated Borrower that is a Domestic Subsidiary.

“Domestic Credit Party” means each Domestic Borrower and each Guarantor that is a Domestic Subsidiary.

“Domestic Subsidiary” means any Restricted Subsidiary that is organized under the laws of any political subdivision of the United States.

~~“Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6<sup>th</sup>) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, <so long as the Administrative Agent has not received, by 5:00 p.m. >on the fifth (5<sup>th</sup>) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.~~

~~“Early Opt-in Election” means the occurrence of (a) a determination by the Administrative Agent, or a notification by the Borrowers to the Administrative Agent that the Borrowers have made a determination, that Dollar denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(b), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and (b) the joint election by the Administrative Agent and the Borrowers to replace LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Copy” has the meaning set forth in Section 10.17(a).

“Electronic Record” has the meaning assigned to that term by 15 USC §7006.

“Electronic Signature” has the meaning assigned to that term by 15 USC §7006.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(ii) and (iv) (subject to such consents, if any, as may be required under Section 10.06(b)(ii)). For the avoidance of doubt, any Disqualified Institution is subject to Section 10.06(g).

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any violation (or alleged violation) by the Company or any of its Restricted Subsidiaries under any Environmental Law (hereafter “Claims”) or any permit issued to the Company or any of its Restricted Subsidiaries under any such law, including, without limitation, (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response,

remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health or the environment, pursuant to Environmental Law.

**“Environmental Laws”** means any U.S. or non-U.S. federal, state or local law, statute, rule, regulation, ordinance, code or rule of common law now or hereafter in effect and in each case as amended, and any legally binding judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment (for purposes of this definition (collectively, “Laws”), relating to the protection of the environment, or Hazardous Materials or health and safety to the extent such health and safety issues relate to the handling of, or exposure to, Hazardous Materials.

**“Equity Interests”** means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**“ERISA Event”** has the meaning specified in Section 6.08.

**“ESG”** has the meaning set forth in Section 2.20.

**“ESG Amendment”** has the meaning set forth in Section 2.20.

**“ESG Applicable Rate Adjustments”** has the meaning set forth in Section 2.20.

**“ESG Pricing Provisions”** has the meaning set forth in Section 2.20.

**“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.

**“EURIBOR”** has the meaning specified in clause (a) of the definition of “Alternative Currency Term Rate”.

**“Euro”** and **“EUR”** mean the single currency of the Participating Member States.

**“Event of Default”** has the meaning specified in Section 8.01.

**“Excluded Equity Interest”** means (a) margin stock, (b) Equity Interests of any Person other than any Borrower or any wholly owned Material Subsidiary that is a Restricted Subsidiary directly owned by a Domestic Credit Party, (c) Equity Interests of any Material Subsidiary that is a wholly owned Foreign Subsidiary or Foreign Subsidiary Holding Company directly owned by a Domestic Credit Party in excess of 65% of such Material Subsidiary’s issued and outstanding Equity Interests and (d) any Equity Interest to the extent the pledge thereof would be prohibited by such Person’s Organization Documents or joint venture documents on the Closing Date (or, with respect to any Subsidiary acquired by a Borrower or a Restricted Subsidiary after the Closing Date, so long as such prohibition or restriction was not incurred in contemplation of such Acquisition, on the date such Subsidiary is so acquired) (excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code).

**“Excluded Property”** means, with respect to any Credit Party, (a) (x) any fee owned real property and (y) any real property leasehold rights and interests (it being understood there shall be no requirement

to obtain any landlord or other third party waivers, estoppels or collateral access letters) or any fixtures affixed to any real property to the extent a security interest in such fixtures may not be perfected by a Uniform Commercial Code financing statement in the jurisdiction of organization of the applicable Credit Party; (b) motor vehicles, aircraft and other assets subject to certificates of title; (c) commercial tort claims; (d) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a Uniform Commercial Code financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights other than filing of a Uniform Commercial Code financing statement)); (e) any governmental licenses or state or local franchises, charters and authorizations, to the extent a security interest in any such license, franchise, charter or authorization is prohibited or restricted thereby (excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code); (f) assets to the extent the pledge thereof or grant of security interests therein (i) is prohibited or restricted by applicable Law, rule or regulation, (ii) would cause the destruction, invalidation or abandonment of such asset under applicable Law, rule or regulation, or (iii) requires any consent, approval, license or other authorization of any third party or Governmental Authority (excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code); (g) Excluded Equity Interests; (h) any lease, license or agreement, or any property subject to a purchase money security interest, capital lease obligation or similar arrangement, in each case to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or create a right of termination in favor of any other party thereto (other than any Credit Party or Restricted Subsidiary) or otherwise require consent thereunder (other than from any Credit Party or Restricted Subsidiary) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code notwithstanding such prohibition; (i) any assets to the extent a security interest in such assets would result in material adverse Tax consequences as reasonably determined by the Company in consultation with the Administrative Agent; (j) any intent-to-use trademark application prior to the filing, and acceptance by the U.S. Patent and Trademark Office, of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law; (k) assets where the cost of obtaining a security interest therein is excessive in relation to the practical benefit to the Lenders afforded thereby as reasonably determined between the Company and the Administrative Agent; and (l) any acquired property (including property acquired through the acquisition or merger of another entity) if at the time of such acquisition the granting of a security interest therein or the pledge thereof is prohibited by any contract or other agreement (in each case, not created in contemplation thereof) to the extent and for so long as such contract or other agreement prohibits such security interest or pledge (excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code).

**"Excluded Securitization Transaction"** means any financing transaction or series of related financing transactions (including a Supply Chain Financing Transaction, a receivables facility or receivables factoring, discounting or other similar program) providing for the discounted sale of receivables of the Company or any Restricted Subsidiary that is both off-balance sheet and non-recourse to the Company or any Restricted Subsidiary.

**"Excluded Subsidiary"** means (a) any Subsidiary that is not a wholly-owned Subsidiary, (b) any Foreign Subsidiary, (c) any Domestic Subsidiary (i) that is a direct or indirect subsidiary of a CFC or (ii) that is a Foreign Subsidiary Holding Company, (d) any Subsidiary that is prohibited or restricted by applicable Law, accounting policies or by contractual obligation existing on the Closing Date (or, with respect to any Subsidiary acquired by a Borrower or a Restricted Subsidiary after the Closing Date (and so long as such contractual obligation was not incurred in contemplation of such acquisition, on the date such Subsidiary is so acquired) from providing a Guaranty, or if such Guaranty would require governmental (including regulatory) or third party consent, approval, license or authorization, unless such consent, approval, license or authorization has been received, (e) any special purpose securitization vehicle (or similar entity, including any Receivables Subsidiary), (f) any captive insurance subsidiary, (g) any not for profit Subsidiary, (h) any Immaterial Subsidiary, (i) each Unrestricted Subsidiary, (j) any Subsidiary with respect to which the Guaranty would result in material adverse Tax consequences as reasonably determined by the Company in consultation with the Administrative Agent and (k) any other Subsidiary with respect to which the Administrative Agent and the Company reasonably agree that the

burden or cost of providing the Guaranty shall outweigh the benefits to be obtained by the Lenders therefrom.

**“Excluded Swap Obligation”** means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Credit Party of, or the grant under a Loan Document by such Credit Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 11.08 and any and all guarantees of such Credit Party’s Swap Obligations by other Credit Parties) at the time the Guaranty of such Credit Party, or grant by such Credit Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Agreement, such exclusion shall apply to only the portion of such Swap Obligation that is attributable to Swap Agreements for which such Guaranty or security interest is or becomes illegal.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Company under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), 3.01(a)(iii) or 3.01(c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

**“Existing Credit Agreement”** means that certain Credit Agreement dated as of March 29, 2011 by and among the Company, the lenders party thereto and Bank of America, as administrative agent.

**“Existing Letters of Credit”** means the standby letters of credit existing as of the Closing Date and described on Schedule 1.01.

**“Extended Revolving Commitment”** means any Revolving Commitments the maturity of which shall have been extended pursuant to Section 2.18.

**“Extended Revolving Loans”** means any Loans made pursuant to the Extended Revolving Commitments.

**“Extended Term Loans”** means any Term Loans the maturity of which shall have been extended pursuant to Section 2.18.

**“Extension”** has the meaning specified in Section 2.19(a).

**“Extension Offer”** has the meaning specified in Section 2.19(a).

**“FATCA”** means Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements entered into in connection with the foregoing.

**Federal Funds Effective Rate** means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**Fee Letter** means the letter agreement, dated June 17, 2021, among the Company and BofA Securities.

**Foreign Borrower** means each Borrower that is a Foreign Subsidiary.

**Foreign Borrower Sublimit** means an amount equal to the greater of (a) the lesser of the Aggregate Revolving A Commitments and \$300,000,000 and (b) 50% of the Aggregate Revolving A Commitments. The Foreign Borrower Sublimit is part of, and not in addition to, the Aggregate Revolving A Commitments.

**Foreign Lender** means a Lender that is not a U.S. Person.

**Foreign Pension Plan** means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States of America by the Company or any one or more of its Restricted Subsidiaries primarily for the benefit of employees of the Company or any of its Restricted Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

**Foreign Receivables Facilities Financing Costs** means, for any period, as to any Foreign Subsidiary party to a Foreign Receivables Facility, the total consolidated interest expense of such Foreign Subsidiary which would have existed for such period pursuant to such Foreign Receivables Facility if same were structured as a secured lending arrangement rather than as a receivables facility or factoring program for the sale of receivables and related assets, in each case assuming an imputed interest rate commensurate with amounts being charged pursuant to the Foreign Receivables Facility (whether as fees, by way of a discount on a receivable sold or otherwise).

**Foreign Receivables Facility** means a receivables facility or receivables factoring, discounting or other similar program entered into by a Foreign Subsidiary providing for the discounted sale of receivables of such Foreign Subsidiary (it being understood that no Supply Chain Financing Transaction shall constitute a Foreign Receivables Facility).

**Foreign Receivables Indebtedness** means indebtedness of one or more Foreign Subsidiaries deemed to exist pursuant to a Foreign Receivables Facility, determined as if such Foreign Receivables Facility was structured as a secured financing transaction as opposed to an asset purchase and sale transaction.

**Foreign Subsidiary** means any Restricted Subsidiary other than a Domestic Subsidiary.

**Foreign Subsidiary Holding Company** means, as of any time of determination, a Restricted Subsidiary substantially all of the assets of which consist of, directly or indirectly, Equity Interests in or Equity Interests in and Indebtedness of one or more CFCs.

**Fronting Exposure** means, at any time there is a Defaulting Lender that is a Revolving A Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving A Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such

Defaulting Lender's participation obligation has been reallocated to other Revolving A Lenders in accordance with the terms hereof.

**"Fund"** means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**"Funding Indemnity Letter"** means a letter by and among the Company and the Administrative Agent, on behalf of the Lenders, entered into on or prior to the date that is three Business Days prior to the Closing Date pursuant to which the Company agrees to compensate the Lenders for certain losses, costs or expenses incurred by such Lender as a result of any failure for any reason to make the Borrowings on the date set forth therein, in the form agreed to by the parties thereto.

**"GAAP"** means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

**"Governmental Authority"** means the government of the United States, Canada, 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, without limitation, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

**"Guarantee"** means, as to any Person any obligation of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (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 such primary obligation against loss in respect thereof; provided, however, that the term Guarantee shall not include endorsements of instruments for deposit or collection or standard contractual indemnities entered into, in each case in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

**"Guarantors"** means the collective reference to (a) each wholly-owned Material Domestic Subsidiary of the Company identified as a "Guarantor" on the signature pages to the Second Amendment, (b) each wholly-owned Material Domestic Subsidiary and each additional Restricted Subsidiary that executes and delivers to the Administrative Agent a Guaranty Supplement pursuant to Section 6.10, (c) with respect to (i) Obligations of the Designated Borrowers, (ii) Obligations under any Secured Swap Agreement, (iii) Obligations under any Secured Cash Management Agreement and (iv) any Swap Obligation of a Specified Credit Party (determined before giving effect to Sections 11.01 and 11.08) under the Guaranty, each Domestic Borrower and (d) with respect to the Obligations of the Foreign Borrowers, each Foreign Borrower.

**"Guaranty"** means the Guaranty made by the Guarantors in favor of the Administrative Agent and the other holders of the Obligations pursuant to Article XI.

**"Guaranty Supplement"** means each supplement substantially in the form of Exhibit E executed and delivered by a Restricted Subsidiary pursuant to Section 6.10.

**"Hazardous Materials"** means (a) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is friable, urea formaldehyde foam insulation, polychlorinated biphenyls, and radon gas; and (b) any chemicals, materials or substances defined under any Environmental Law as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous wastes," "restrictive hazardous wastes," "toxic substances" or "toxic pollutants".

**"Honor Date"** has the meaning set forth in Section 2.03(c).

**"IFRS"** means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

**"Immaterial Asset Sale"** means any Disposition (for such purpose, treating any series of related Dispositions as a single such transaction) that generates Net Cash Proceeds of less than \$5,000,000; provided, that the aggregate amount of all Immaterial Asset Sales in any fiscal year of the Company shall not exceed \$25,000,000.

**"Immaterial Subsidiary"** means a Subsidiary that is not a Material Subsidiary.

**"Incremental Amount"** means, as of any date of determination, the sum of (a) the total of (i) the greater of (A) \$350,000,000 and (B) 100% of Consolidated EBITDA for the most recent four fiscal quarter period ended prior to such date of determination for which financial statements have been delivered pursuant to Section 6.01(a) or 6.01(b), as applicable, plus (ii) the aggregate principal amount of voluntary prepayments of the Initial Term Loan, the Initial Term A-2 Loan, Incremental Terms Loans (to the extent such Incremental Term Loans were incurred in reliance on clause (a)(i) above) and Revolving Loans (to the extent such prepayment of Revolving Loans is accompanied by a permanent reduction of the applicable Aggregate Revolving Commitments) made prior to such date, except to the extent such prepayments were funded with the proceeds of long-term Indebtedness, minus (iii) the aggregate amount of increases in the Aggregate Revolving A Commitments and Aggregate Revolving B Commitments, and/or institution of any Incremental Term Loans incurred in reliance on clause (a)(i) above prior to such date pursuant to Section 2.18, plus (b) an unlimited additional amount so long as the Maximum Leverage Ratio Requirement at such time is satisfied at the time of incurrence of the applicable Revolving Commitments or Term Loans minus, (c) the aggregate amount of any Incremental Equivalent Debt incurred prior to such date.

**"Incremental Equivalent Debt"** has the meaning set forth in Section 7.04(y).

**"Incremental Term Lender"** means, with respect to any Incremental Term Loan, each of the Persons identified as an "Incremental Term Lender" in the Incremental Term Loan Lender Joinder Agreement relating to such Incremental Term Loan, together with their respective successors and assigns.

**"Incremental Term Loan"** has the meaning specified in Section 2.01(f).

**"Incremental Term Loan Commitment"** means, as to each Incremental Term Lender, with respect to any Incremental Term Loan, its obligation to make its portion of such Incremental Term Loan hereunder pursuant to the Incremental Term Loan Lender Joinder Agreement relating to such Incremental Term Loan; provided, that at any time after the funding of such Incremental Term Loan, the determination of "Required Lenders" shall include the Outstanding Amount of all Incremental Term Loans.

**"Incremental Term Loan Lender Joinder Agreement"** means a joinder agreement, substantially in the form of Exhibit J, executed and delivered in accordance with the provisions of Section 2.18(c).

“Incremental Term Loan Maturity Date” with respect to any Incremental Term Loan, shall be as set forth in the Incremental Term Loan Lender Joinder Agreement for such Incremental Term Loan.

“Incremental Term Note” has the meaning specified in Section 2.11(a).

“Indebtedness” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) the deferred purchase price of assets or services payable to the sellers thereof or any of such seller’s assignees which in accordance with GAAP would be shown on the liability side of the balance sheet of such Person but excluding deferred rent and trade payables not overdue by more than 60 days, both as determined in accordance with GAAP, (c) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder, (d) all Indebtedness of a second Person secured by any Lien on any property owned by such first Person, whether or not such Indebtedness has been assumed, (e) all Capitalized Lease Obligations of such Person, (f) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, i.e., take-or-pay and similar obligations, (g) all obligations under any Swap Agreement, (h) all Guarantees of such Person with respect to the types of Indebtedness specified in clauses (a) through (g) and (i) through (j) hereof, (i) all Foreign Receivables Indebtedness and all Receivables Indebtedness, (j) all Synthetic Lease Obligations and (k) all Disqualified Preferred Stock issued by such Person, valued, as of the date of determination, at the greater of (i) the maximum aggregate amount that would be payable upon maturity, redemption, repayment or repurchase thereof (or of Disqualified Preferred Stock or Indebtedness into which such Disqualified Preferred Stock is convertible or exchangeable) and (ii) the maximum liquidation preference of such Disqualified Preferred Stock; provided that Indebtedness shall not include trade payables and accrued expenses, in each case arising in the ordinary course of business and, in the case of trade payables, not overdue by more than 60 days. The amount of any obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. For the avoidance of doubt, Excluded Securitization Transactions shall not constitute “Indebtedness”.

“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 Credit Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Initial Term A-2 Lender” means any Lender that holds a portion of the Initial Term A-2 Loan at such time.

“Initial Term A-2 Loan” has the meaning specified in Section 2.01(d).

“Initial Term A-2 Loan Commitment” means, as to each Initial Term A-2 Lender, its obligation to make its portion of the Initial Term A-2 Loan to the Canadian Borrower pursuant to Section 2.01(d), in the principal amount set forth opposite such Initial Term A-2 Lender’s name on Schedule 2.01. The aggregate principal amount of the Initial Term A-2 Loan Commitments of all of the Initial Term A-2 Lenders as in effect on the Second Amendment Effective Date is ONE HUNDRED SIX MILLION FOUR HUNDRED FORTY THOUSAND CANADIAN DOLLARS (C\$106,440,000).

“Initial Term A-2 Note” has the meaning specified in Section 2.11(a).

“Initial Term Lender” means any Lender that holds a portion of the Initial Term Loan at such time.

“Initial Term Loan” has the meaning specified in Section 2.01(c).

**"Initial Term Loan Commitment"** means, as to each Initial Term Lender, its obligation to make its portion of the Initial Term Loan to the Company pursuant to Section 2.01(c), in the principal amount set forth opposite such Initial Term Lender's name on Schedule 2.01. The aggregate principal amount of the Initial Term Loan Commitments of all of the Initial Term Lenders as in effect on the Second Amendment Effective Date is ONE HUNDRED THIRTY MILLION DOLLARS (\$130,000,000).

**"Initial Term Note"** has the meaning specified in Section 2.11(a).

**"Interest Payment Date"** means, (a) as to any ~~LIBOR Rate Loan, any~~ Term SOFR Loan, or any Alternative Currency Term Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a ~~LIBOR Rate Loan, a~~ Term SOFR Loan, or an Alternative Currency Term Rate Loan, as applicable, exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; (b) as to any Alternative Currency Daily Rate Loan, the last Business Day of each calendar month and the Maturity Date; and (c) as to any Base Rate Loan (including a Swing Line Loan) or any Canadian Prime Rate Loan, the last Business Day of each March, June, September and December, and the Maturity Date.

**"Interest Period"** means, as to each ~~LIBOR Rate Loan, each~~ Term SOFR Loan, and each Alternative Currency Term Rate Loan, the period commencing on the date such Loan is disbursed or converted to or continued as a ~~LIBOR Rate Loan, a~~ Term SOFR Loan, or an Alternative Currency Term Rate Loan, as applicable, and ending on (x) solely with respect to ~~LIBOR Rate Loans or~~ Alternative Currency Term Rate Loans, the date one, three or six months (or, solely with respect to Alternative Currency Term Rate Loans denominated in Canadian Dollars, one or three months) thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the applicable Borrower in its Loan Notice, (y) solely with respect to Term SOFR Loans, the date one or three months thereafter (in each case, subject to availability), as selected by the applicable Borrower in its Loan Notice, or (z) such other period that is twelve months or less requested by the applicable Borrower and consented to by all the Lenders required to fund or maintain a portion of such Loan; provided that:

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Maturity Date.

**"Investment"** has the meaning set forth in Section 7.05.

**"IRB Sale-Leaseback Transaction"** means any arrangement of the Company or any of its wholly-owned Domestic Subsidiaries that are Restricted Subsidiaries with any industrial revenue authority in the United States which provides for (a) the sale of real property or personal property by the Company or such Restricted Subsidiary (other than any such real property or personal property owned on the Closing Date) to such authority, (b) the leaseback of such real property or personal property by the Company or such Restricted Subsidiary from such authority, and (c) the subsequent purchase by the Company or such Restricted Subsidiary of tax-exempt industrial revenue bonds (or similar instruments) issued by such authority.

**"IRS"** means the United States Internal Revenue Service.

**"ISP"** means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

**"Issuer Documents"** means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Company (or any Restricted Subsidiary) or in favor of the L/C Issuer and relating to any such Letter of Credit.

**"Joint Venture"** means any Person, other than an individual or a wholly-owned Subsidiary of the Company, (a) in which the Company or a Restricted Subsidiary of the Company holds or acquires an ownership interest (whether by way of capital stock, partnership or limited liability company interest, or other evidence of ownership) and (b) which is engaged in a Permitted Business.

**"Junior Debt"** means Refinancing Junior Loans, any Shareholder Subordinated Notes, any other contractually subordinated junior lien Indebtedness and any Indebtedness of the Company or any Restricted Subsidiary that is by its terms subordinated or required to be subordinated in right of payment to any of the Obligations.

**"KPIs"** has the meaning set forth in Section 2.20.

**"L/C Advance"** means, with respect to each Revolving A Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

**"L/C Borrowing"** means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing of Revolving A Loans. All L/C Borrowings shall be denominated in Dollars.

**"L/C Commitment"** means, with respect to the L/C Issuer, the commitment of the L/C Issuer to issue Letters of Credit hereunder. The initial amount of the L/C Commitment is set forth on Schedule 2.01. The L/C Commitment may be modified from time to time by written agreement between the L/C Issuer and the Company (with a copy of such agreement provided to the Administrative Agent).

**"L/C Credit Extension"** means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

**"L/C Issuer"** means Bank of America, through itself or one of its designated Affiliates or branches, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

**"L/C Obligations"** means, as at any date of determination, the sum of (a) the aggregate amount available to be drawn under all outstanding Letters of Credit plus (b) the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

**"Latest Maturity Date"** means the latest of (a) the Maturity Date for the Revolving A Loans, (b) the Maturity Date for the Revolving B Loans, (c) the Maturity Date for the Initial Term Loan, (d) the Maturity Date for the Initial Term A-2 Loan, (e) the Maturity Date for the Term A-3 Loan, (f) any Incremental Term Loan Maturity Date and (g) the maturity date for any Specified Refinancing Term Loan, Extended Revolving Commitment or Extended Term Loan, in each case, as of any date of determination.

**"Laws"** means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"LCT Test Date" has the meaning set forth in Section 1.02(d).

"Lender" means each of the Persons identified as a "Lender" on the signature pages hereto, each other Person that becomes a "Lender" in accordance with this Agreement and their successors and assigns and, as the context requires, includes the Swing Line Lender.

"Lender Party" means each of the Lenders, the Swing Line Lender and the L/C Issuer.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"Letter of Credit" means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a letter of credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is five days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(h).

"Letter of Credit Sublimit" means an amount equal to the lesser of (a) the Aggregate Revolving A Commitments and (b) \$125,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving A Commitments.

"LIBOR" has the meaning specified in the definition of "LIBOR Rate".

"LIBOR Rate" means:

(a) for any Interest Period with respect to any Credit Extension denominated in Dollars, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for such currency for a period equal in length to such Interest Period) ("LIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in the Dollars, with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits with a term of one month commencing that day;

~~provided, that, if the LIBOR Rate shall be less than zero percent (0%), such rate shall be deemed zero percent (0%) for purposes of this Agreement.~~

"LIBOR Rate Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "LIBOR Rate". LIBOR Rate Loans shall be denominated in Dollars.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any

financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

**Limited Conditionality Transaction** means (a) a Permitted Acquisition or other Investment, the consummation of which is not conditioned on the availability of, or on obtaining, third party financing or (b) any Debt Repurchase requiring irrevocable notice in advance thereof.

**Loan** means an extension of credit by a Lender to a Borrower under Article II in the form of a Revolving Loan, a Term Loan or a Swing Line Loan.

**Loan Documents** means this Agreement, the Notes, the Fee Letter, any Guaranty Supplements, the Collateral Documents, each Issuer Document, each Incremental Term Loan Lender Joinder Agreement, each Borrower Request and Assumption Agreement, each ESG Amendment, and all other documents and agreements contemplated hereby and executed by the Company or any Restricted Subsidiary in favor of the Administrative Agent or any Lender (but specifically excluding Secured Swap Agreements and any Secured Cash Management Agreements).

**Loan Notice** means a notice of (a) a Borrowing of Loans, (b) a conversion of Loans from one Type to another Type, or (c) a continuation of ~~EIBOR Rate Loans~~, Term SOFR Loans, or Alternative Currency Term Rate Loans, in each case pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A-1 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) appropriately completed and signed by an Authorized Officer of the applicable Borrower.

**Market Intercreditor Agreement** means an intercreditor agreement the terms of which are consistent with market terms governing security arrangements for the sharing of Liens, subordination arrangements and/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.

**Master Agreement** means 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, together with any related schedules.

**Material Adverse Effect** means (a) a material adverse effect on the business, properties, assets, operations, liabilities or financial condition of the Company and its Restricted Subsidiaries taken as a whole or (b) a material adverse effect (i) on the rights or remedies of the Lenders or the Administrative Agent hereunder or under any other Loan Document or (ii) on the ability of any Credit Party to perform its obligations to the Lenders or the Administrative Agent hereunder or under any other Loan Document, taking into account in the case of either of clauses (a) or (b) above (in each such case to the extent relevant) insurance, indemnities, rights of contribution and/or similar rights and claims available and applicable to any determination pursuant to this definition so long as consideration is given to the nature and quality of, and likelihood of recovery under, such insurance, indemnities, rights of contribution and/or similar rights and claims.

**Material Domestic Subsidiary** means each Domestic Subsidiary that is a Material Subsidiary.

**Material Subsidiary** means each Restricted Subsidiary that, as of the last day of the most recent fiscal quarter, for the period of twelve months then ended, for which financial statements have been delivered, or are required to have been delivered, pursuant to Section 6.01, (a) contributed more than twelve and one half percent (12.5%) of the Company and its Restricted Subsidiaries' consolidated revenues for such period or (b) contributed more than twelve and one half percent (12.5%) of the Consolidated Total Assets of the Company and its Restricted Subsidiaries for such period; provided that if a Person becomes a Restricted Subsidiary pursuant to or in connection with an Acquisition, then such initial determination shall be made as of the date such Acquisition is consummated, based on the financial statements of such Person for its most recent quarter end (for the period of twelve months then ended) for which financial statements are available (which may be unaudited).

**"Maturity Date"** means September 30, 2026; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

**"Maximum Leverage Ratio Requirement"** means, with respect to any request pursuant to Section 2.18 or in respect of any Incremental Equivalent Debt, the requirement that the Company shall have delivered to the Administrative Agent a Compliance Certificate demonstrating that immediately after giving pro forma effect to the applicable increase in the Aggregate Revolving A Commitments and Aggregate Revolving B Commitments and/or institution of an Incremental Term Loan and the use of proceeds therefrom (and any related Acquisitions, other Investments or other transactions in connection therewith), the Consolidated Secured Net Leverage Ratio does not exceed 2.50 to 1.00 (it being understood that any increase and/or institution may be incurred prior to any increase and/or institution in reliance on clause (a) of the definition of "Incremental Amount", and, in the case of a simultaneous incurrence and/or advance of the maximum amount permitted to be incurred under clause (a) of the definition of "Incremental Amount", the Company shall not be required to give pro forma effect to any such increase and/or institution in reliance on clause (a) of the definition of "Incremental Amount"); provided, that, for the purpose of calculating the Consolidated Secured Net Leverage Ratio pursuant to this definition, such increase of the Aggregate Revolving A Commitments and the Aggregate Revolving B Commitments, as applicable, shall be deemed to be fully drawn.

**"Minimum Collateral Amount"** means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 103% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.14(a)(i), (a)(ii) or (a)(iii), an amount equal to 103% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

**"Moody's"** means Moody's Investors Service, Inc. and any successor to its rating agency business.

**"Multiemployer Plan"** means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

**"Net Cash Proceeds"** means the aggregate cash or Cash Equivalents proceeds received by the Company or any Restricted Subsidiary in respect of any Disposition, Recovery Event or Debt Issuance net of (a) fees, expenses and costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees and sales commissions), (b) Taxes paid or payable as a result thereof and (c) in the case of any Disposition or any Recovery Event, the amount necessary to retire any Indebtedness secured by a Lien permitted hereunder (ranking senior to any Lien of the Administrative Agent) on the related property; it being understood that "Net Cash Proceeds" shall include any cash or Cash Equivalents received upon the Disposition of any non-cash consideration received by the Company or any Restricted Subsidiary in any Disposition or Recovery Event.

**"Non-Consenting Lender"** means (a) any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders and (b) any Lender that does not approve of the addition of an Applicant Borrower that has been approved by the Revolving A Lenders, Revolving B Lenders and/or Incremental Term Lenders, as applicable, holding in the aggregate more than 50% of the relevant class of Commitments (it being understood that the unfunded Commitments of any Defaulting Lender shall be excluded from such determination).

**"Non-Credit Party"** means a Restricted Subsidiary that is not a Credit Party.

**"Non-Defaulting Lender"** means, at any time, each Lender that is not a Defaulting Lender at such time.

**Note** or **Notes** means the Revolving Notes, the Initial Term Notes, the Initial Term A-2 Notes, the Term A-3 Notes, the Incremental Term Notes and/or the Swing Line Loan Notes, individually or collectively, as appropriate.

**Obligations** means, collectively, all unpaid principal of and accrued and unpaid interest on all Loans or Letters of Credit, accrued and unpaid fees, and expenses, reimbursements, indemnities and other obligations of any Credit Party to the Lenders or to any Lender, the L/C Issuer, the Administrative Agent or any Indemnitee hereunder arising under this Agreement or any other Loan Document, all amounts payable by any Credit Party or any Restricted Subsidiary under any Secured Swap Agreement or Secured Cash Management Agreement, and including interest and fees that accrue after the commencement by or against any Credit Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, however, that the “Obligations” of a Credit Party shall exclude any Excluded Swap Obligations with respect to such Credit Party.

**OFAC** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**Organization Documents** means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

**Other Connection Taxes** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

**Other Rate Early Opt-in** means the ~~Administrative Agent and the Borrowers have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (a) an Early Opt-in Election, (b) Section 3.03(b)(ii), and (c) clause (b) of the definition of “Benchmark Replacement”.~~

**Other Hedging Agreements** means any foreign exchange contracts, currency swap agreements or other similar agreements or arrangements designed to protect against fluctuations in currency values.

**Other Taxes** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

**Outstanding Amount** means (a) with respect to any Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the outstanding amount of such L/C Obligations after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Company of Unreimbursed Amounts.

**Overnight Rate** means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Effective Rate and (ii) an overnight rate determined by the Administrative

Agent, the L/C Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, an overnight rate determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Participating Member State” means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means an Investment consisting of an Acquisition by any Credit Party or any Restricted Subsidiary; provided that (a) no Default shall have occurred and be continuing or would result from such Acquisition (subject, in the case of a Limited Conditionality Transaction, to Section 1.02(d)), (b) the property acquired (or the property of the Person acquired) in such Acquisition shall be a Permitted Business, (c) in the case of an Acquisition of the Equity Interests of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such Acquisition, (d) the Company shall have delivered to the Administrative Agent a Compliance Certificate demonstrating that immediately after giving pro forma effect to the Acquisition, the Credit Parties would be in compliance with the financial covenants set forth in Section 7.08 and 7.09 recomputed as of the end of the period of twelve months most recently ended for which the Company has delivered financial statements pursuant to Section 6.01(a) or (b) and (e) if such transaction involves the purchase of an interest in a partnership between any Credit Party as a general partner and entities unaffiliated with the Company as the other partners, such transaction shall be effected by having such equity interest acquired by a corporate holding company directly or indirectly wholly owned by such Credit Party newly formed for the sole purpose of effecting such transaction. Notwithstanding anything to the contrary contained in the immediately preceding sentence, an acquisition which does not otherwise meet the requirements set forth above in the definition of “Permitted Acquisition” shall constitute a Permitted Acquisition if, and to the extent, the Required Lenders agree in writing that such acquisition shall constitute a Permitted Acquisition for purposes of this Agreement.

“Permitted Business” means the manufacture, distribution, installation and servicing of batteries and reasonably related products and technologies, and activities reasonably related to the foregoing.

“Permitted Encumbrances” mean (i) as to any particular real property at any time, such easements, encroachments, covenants, rights of way, minor defects, irregularities or encumbrances on title which could not reasonably be expected to materially impair such real property for the purpose for which it is held by the mortgagor thereof and which do not secure any Indebtedness, (ii) zoning and other municipal ordinances which are not violated in any material respect by the existing improvements and the present use made by the mortgagor thereof of the premises and (iii) general real estate taxes and assessments not yet delinquent.

“Permitted Liens” shall have the meaning provided in Section 7.03.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, replacement, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, replaced, refunded, renewed or extended, except by an amount equal to unpaid accrued interest, fees, expenses and premium thereon and by an amount equal to any existing commitments unutilized thereunder, (b) such modification, refinancing, replacement, refunding, renewal or extension has a final stated maturity date equal to or later than the final stated maturity date of, and has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Indebtedness being modified, refinanced, replaced, refunded,

renewed or extended, (c) at the time thereof, no Event of Default shall have occurred and be continuing or would result therefrom, (d) such modification, refinancing, replacement, refunding, renewal or extension does not add guarantors, obligors or security from that which applied to such Indebtedness being modified, refinanced, replaced, refunded, renewed or extended, (e) to the extent such Indebtedness being modified, refinanced, replaced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, replacement, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, replaced, refunded, renewed or extended and (f) to the extent such Indebtedness being modified, refinanced, replaced, refunded, renewed or extended is secured by Liens that are subordinated to the Liens securing the Obligations, such modification, refinancing, replacement, refunding, renewal or extension is unsecured or secured by Liens that are subordinated to the Liens securing the Obligations on terms at least as favorable to the Lenders as those contained in the documentation (including any intercreditor or similar agreements) governing the Indebtedness being modified, refinanced, replaced, refunded, renewed or extended.

“Permitted Refinancing Debt Documents” means the documentation governing any Permitted Refinancing Indebtedness.

“Permitted Refinancing Indebtedness” means any Indebtedness modified, refinanced, replaced, refunded, renewed or extended pursuant to, and in accordance with the requirements of, a Permitted Refinancing.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Company or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” has the meaning specified in Section 6.01.

“Preferred Stock,” as applied to the capital stock of any Person, means capital stock of such Person (other than common stock of such Person) of any class or classes (however designated) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of capital stock of any other class of such Person, and shall include any Qualified Preferred Stock and any preferred stock which is not Qualified Preferred Stock.

“Pro Forma Basis” means, in connection with any calculation of compliance with any financial covenant or financial term, the calculation thereof after giving effect on a pro forma basis to (x) the incurrence of any Indebtedness (other than revolving Indebtedness, except to the extent same is incurred to refinance other outstanding Indebtedness or to finance a Specified Transaction) after the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, as if such Indebtedness had been incurred (and the proceeds thereof applied) on the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, (y) the permanent repayment of any Indebtedness (other than revolving Indebtedness, except to the extent accompanied by a corresponding permanent commitment reduction) after the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, as if such Indebtedness had been retired or repaid on the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, and (z) any Acquisition or any Significant Asset Sale then being consummated as well as any other Acquisition or any other Significant Asset Sale if consummated after the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, and on or prior to the

date of the respective Acquisition or Significant Asset Sale, as the case may be, then being effected, with the following rules to apply in connection therewith:

(a) all Indebtedness (i) (other than revolving Indebtedness, except to the extent same is incurred to refinance other outstanding Indebtedness or to finance a Specified Transaction) incurred or issued after the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b) (whether incurred to finance an Acquisition, to refinance Indebtedness or otherwise) shall be deemed to have been incurred or issued (and the proceeds thereof applied) on the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, and remain outstanding through the date of determination and (y) (other than revolving Indebtedness, except to the extent accompanied by a corresponding permanent commitment reduction) permanently retired or redeemed after the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, shall be deemed to have been retired or redeemed on the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, and remain retired through the date of determination;

(b) all Indebtedness assumed to be outstanding pursuant to preceding clause (a) shall be deemed to have borne interest at (i) the rate applicable thereto, in the case of fixed rate indebtedness, or (ii) the rates which would have been applicable thereto during the respective period when same was deemed outstanding, in the case of floating rate Indebtedness (although interest expense with respect to any Indebtedness for periods while same was actually outstanding during the respective period shall be calculated using the actual rates applicable thereto while same was actually outstanding); provided that all Indebtedness (whether actually outstanding or deemed outstanding) bearing interest at a floating rate of interest shall be tested on the basis of the rates applicable at the time the determination is made pursuant to said provisions; and

(c) in making any determination of Consolidated EBITDA on a Pro Forma Basis, pro forma effect shall be given to any Acquisition or any Significant Asset Sale if effected during such period as if same had occurred on the first day of the most recent four fiscal quarter period preceding the date of such transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), as the case may be, taking into account, in the case of any Acquisition, factually supportable and identifiable cost savings and expenses which would otherwise be accounted for as an adjustment pursuant to Article 11 of Regulation S-X under the Securities Act of 1933, as if such cost savings or expenses were realized on the first day of the respective period.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 6.01.

“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).

“QFC Credit Support” has the meaning set forth in Section 10.21.

“Qualified Acquisition” means (a) an Acquisition permitted hereunder for which the aggregate cash and non-cash consideration (including assumed Indebtedness, the good faith estimate by the Company of the maximum amount of any deferred purchase price obligations (including any earn out payments) and Equity Interests) exceeds \$250,000,000, or (b) a series of related Acquisitions in any twelve (12) month period, for which the aggregate cash and non-cash consideration (including assumed Indebtedness, the good faith estimate by the Company of the maximum amount of any deferred purchase price obligations (including any earn out payments) and Equity Interests) for all such Acquisitions

exceeds \$250,000,000; provided, that, for any Acquisition or series of Acquisitions to qualify as a “Qualified Acquisition”, the Administrative Agent shall have received, prior to the consummation of such Acquisition or the last in a series of related Acquisitions, a Qualified Acquisition Election Certificate with respect to such Acquisition or series of Acquisitions.

“Qualified Acquisition Election Certificate” means a certificate of an Authorized Officer of the Company, in form and substance reasonably satisfactory to the Administrative Agent, (a) certifying that the applicable Acquisition or series of related Acquisitions meet the criteria set forth in clauses (a) or (b) (as applicable) of the definition of “Qualified Acquisition”, and (b) notifying the Administrative Agent that the Company has elected to treat such Acquisition or series of related Acquisitions as a “Qualified Acquisition”.

“Qualified ECP Guarantor” means, at any time, each Credit Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Preferred Stock” means any preferred stock of the Company so long as the terms of any such preferred stock (a) do not contain any mandatory put, redemption, repayment, sinking fund or other similar provision requiring payment prior to one year after the Latest Maturity Date (as determined at the time of issuance of such Qualified Preferred Stock) other than to the extent such provision is triggered as a result of a change of control or asset sale, so long as the rights of the holders thereof upon the occurrence of such change of control or asset sale event are subject to the prior payment in full of all Obligations, the cancellation of all Letters of Credit and termination of the Commitments, (b) do not require the cash payment of dividends at a time when such payment would be prohibited or not permitted under this Agreement, (c) do not grant the holders thereof any voting rights except for (i) voting rights required to be granted to such holders under applicable law and (ii) limited customary voting rights on fundamental matters such as mergers, consolidations, sales of all or substantially all of the assets of the Company, or liquidations involving the Company, and (d) are otherwise reasonably satisfactory to the Administrative Agent.

“Rate Determination Date” means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent).

“RBSL” has the meaning specified in Section 3.03(b).

“Receivables Facilities Financing Costs” means, for any period, as to the Company or any Restricted Subsidiary party to a Receivables Facility, the total consolidated interest expense of the Company or such Restricted Subsidiary, as applicable, which would have existed for such period pursuant to such Receivables Facility if same were structured as a secured lending arrangement rather than as a receivables facility or factoring program for the sale of receivables and related assets, in each case assuming an imputed interest rate commensurate with amounts being charged pursuant to the Receivables Facility (whether as fees, by way of a discount on a receivable sold or otherwise).

“Receivables Facility” means a receivables facility or receivables factoring, discounting or other similar program entered into by the Company or a Restricted Subsidiary providing for the discounted sale of receivables and related assets of the Company or such Restricted Subsidiary, as applicable, to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Subsidiary that sells or grants a security interest in such receivables and related assets to a Person that is not a Restricted Subsidiary (it being understood that no Foreign Receivables Facility and no Supply Chain Financing Transaction shall constitute a Receivables Facility).

“Receivables Indebtedness” means indebtedness of the Company or one or more Restricted Subsidiaries deemed to exist pursuant to a Receivables Facility, determined as if such Receivables

Facility was structured as a secured financing transaction as opposed to an asset purchase and sale transaction.

**“Receivables Subsidiary”** means any Subsidiary formed for the purpose of facilitating or entering into one or more Receivables Facilities or Foreign Receivables Facilities and that engages only in activities reasonably related or incidental thereto.

**“Recipient”** means the Administrative Agent, the L/C Issuer, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder.

**“Recovery Event”** means the receipt by the Company or any of its Restricted Subsidiaries of any insurance or condemnation proceeds in excess of \$5,000,000 for any one Recovery Event and \$25,000,000 for all Recovery Events occurring in any fiscal year of the Company (other than proceeds from business interruption insurance) payable (i) by reason of theft, physical destruction or damage or any other similar event with respect to any properties or assets of the Company or any of its Restricted Subsidiaries, (ii) by reason of any condemnation, taking, seizing or similar event with respect to any properties or assets of the Company or any of its Restricted Subsidiaries and (iii) under any policy of insurance required to be maintained under Section 6.03.

**“Refinancing Amendment”** means an amendment to this Agreement, in form and substance reasonably satisfactory to the Borrowers, the Administrative Agent and the Lenders providing Specified Refinancing Term Loans, effecting the incurrence of such Specified Refinancing Term Loans in accordance with Section 2.17.

**“Refinancing Junior Loans”** means loans under credit or loan agreements that are (a) senior or subordinated and unsecured or (b) secured by the Collateral of the Credit Parties on a junior basis to the credit facilities under this Agreement, incurred in respect of a refinancing of outstanding Term Loans; provided that, (i) no Event of Default shall have occurred and be continuing at the time such Refinancing Junior Loans are incurred; (ii) if such Refinancing Junior Loans shall be secured by a security interest in the Collateral and/or subordinated in right of payment to the Obligations, then such Refinancing Junior Loans shall be issued subject to a Market Intercreditor Agreement that is reasonably satisfactory to the Administrative Agent and the Company; (iii) no Refinancing Junior Loans shall mature prior to the final maturity date of the Term Loan(s) being refinanced, or have a weighted average life to maturity that is less than the weighted average life to maturity of the Term Loan(s) being refinanced thereby, or be subject to any mandatory redemption or prepayment provisions or rights (except related to customary asset sale, similar events and change of control offers) that would result in mandatory prepayment of such Refinancing Junior Loans prior to the Term Loans being refinanced or replaced; provided that this clause (iii) shall not apply to any bridge facility on customary terms if the long-term indebtedness that such bridge facility is to be converted into satisfies the maturity, prepayment and amortization restrictions in such clauses; (iv) the borrower of the Refinancing Junior Loans shall be the Borrower with respect to the Term Loan(s) being refinanced; (v) such Refinancing Junior Loans shall subject to clause (iii) above have pricing (including interest, fees and premiums), optional prepayment and redemption terms as may be agreed to by the Company and the lenders party thereto; (vi) the other terms and conditions (excluding those referenced in clauses (iii) and (v) above) of such Refinancing Junior Loans shall either (x) be substantially identical to, or (taken as a whole) no more favorable to the lenders providing such Refinancing Junior Loans than those applicable to the Term Loans being refinanced or replaced (except for covenants or other provisions applicable only to periods after the Latest Maturity Date of the relevant Term Loans existing at the time of such refinancing or replacement or that are added for the benefit of the Administrative Agent and the Lenders under the then-existing Term Loans) or (y) reflective of market terms and conditions at the time of incurrence or issuance thereof, in each case, as determined in good faith by the Company (except for covenants or other provisions applicable only to periods after the Latest Maturity Date of the relevant Term Loans existing at the time of such refinancing or replacement or that are added for the benefit of the Administrative Agent and the Lenders under the then-existing Term Loans); (vii) the Refinancing Junior Loans may not have guarantors, obligors or security in any case more extensive than that which applied to the applicable Loans being so refinanced; (viii) the aggregate principal amount of the Refinancing Junior Loans shall be in a principal or commitment amount not greater than the aggregate principal amount of the Term Loan(s) being refinanced plus any fees (including original issue discount and upfront fees), premiums and accrued interest associated therewith and costs

and expenses related thereto; and (ix) the Net Cash Proceeds of such Refinancing Junior Loans shall be applied, substantially concurrently with the incurrence thereof, to the pro rata prepayment of outstanding Loans under the applicable class of Loans being so refinanced in accordance with Section 2.05(b).

**“Refinancing Notes”** means one or more series of (a) senior unsecured notes or (b) senior secured notes secured by the Collateral of the Credit Parties (x) on an equal and ratable basis with the credit facilities under this Agreement or (y) on a junior basis to the credit facilities under this Agreement (to the extent then secured by such Collateral) in each case issued in respect of a refinancing of outstanding Indebtedness of Borrowers under the Term Loans; **provided** that, (i) no Event of Default shall have occurred and be continuing at the time such Refinancing Notes are incurred; (ii) if such Refinancing Notes shall be secured by a security interest in the Collateral, then such Refinancing Notes shall be issued subject to a Market Intercreditor Agreement that is reasonably satisfactory to the Administrative Agent and the Company; (iii) no Refinancing Notes shall mature prior to the date that is after the final maturity date of, or have a weighted average life to maturity that is less than the weighted average life to maturity of, in each case, the Term Loans being refinanced and no Refinancing Notes shall be subject to any amortization prior to the final maturity thereof, or be subject to any mandatory redemption or prepayment provisions or rights (except related to customary asset sale, similar events and change of control offers) that would result in mandatory prepayment of such Refinancing Notes prior to the Term Loans being refinanced or replaced; (iv) such Refinancing Notes shall have pricing (including interest, fees and premiums), optional prepayment and redemption terms as may be agreed to by the Company and the lenders party thereto; (v) the other terms and conditions (excluding those referenced in clauses (iii) and (iv) above) of such Refinancing Notes shall be either (x) substantially identical to, or (taken as a whole) no more favorable to the lenders providing such Refinancing Notes than those applicable to the Term Loans being refinanced or replaced (except for covenants or other provisions applicable only to periods after the Latest Maturity Date of the relevant Term Loans existing at the time of such refinancing or replacement or that are added for the benefit of the Administrative Agent and the Lenders under the then-existing Term Loans) or (y) reflective of market terms and conditions at the time of incurrence or issuance thereof, in each case, as determined in good faith by the Company (except for covenants or other provisions applicable only to periods after the Latest Maturity Date of the relevant Term Loans existing at the time of such refinancing or replacement or that are added for the benefit of the Administrative Agent and the Lenders under the then-existing Term Loans); (vi) the Refinancing Notes shall not have security in any case more extensive than that which applied to the applicable Term Loan(s) being so refinanced and shall not have obligors or contingent obligors that were not obligors or contingent obligors (or that would not have been required to become obligors or contingent obligors) in respect of the Term Loan(s) being refinanced; (vii) the aggregate principal amount of the Refinancing Notes shall be in a principal or commitment amount not greater than the aggregate principal amount of the Term Loan(s) being refinanced plus any fees (including original issue discount and upfront fees), premiums and accrued interest associated therewith and costs and expenses related thereto; and (viii) the Net Cash Proceeds of such Refinancing Notes shall be applied, substantially concurrently with the incurrence thereof, to the pro rata prepayment of outstanding Term Loans under the applicable class of Term Loans being so refinanced in accordance with Section 2.05(b).

“**Register**” has the meaning specified in Section 10.06(c).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transactions under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar or euro-for-euro exchange, as applicable, therefor pursuant to an exchange offer registered with the SEC.

“**Related Indemnified Parties**” of an Indemnitee means (a) any controlling Person or controlled Affiliate of such Indemnitee, (b) the respective directors, officers or employees of such Indemnitee or any of its controlling Persons or controlled Affiliates, and (c) the respective agents or representatives of such Indemnitee, in the case of this clause (c), acting on behalf of, or at the instructions of, such Indemnitee.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Relevant Canadian Governmental Body” means (a) with respect to Loans denominated in Dollars, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, (b) with respect to Loans denominated in Sterling, the Bank of England~~Canada~~, or a committee officially endorsed or convened by the Bank of England~~Canada~~, or, in each case, any successor thereto, (c) with respect to Loans denominated in Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto, and (d) with respect to Loans denominated in any other Agreed Currency, (i) the central bank for the currency in which such Loan is denominated or any central bank or other supervisor which is responsible for supervising either (A) such Successor Rate or (B) the administrator of such Successor Rate or (ii) any working group or committee officially endorsed or convened by (A) the central bank for the currency in which such Successor Rate is denominated, (B) any central bank or other supervisor that is responsible for supervising either (1) such Successor Rate or (2) the administrator of such Successor Rate, (C) a group of those central banks or other supervisors or (D) the Financial Stability Board or any part thereof.

“Release Date” has the meaning specified in Section 6.10(f)(i).

“Relevant Rate” means with respect to any Credit Extension denominated in (a) Dollars, LIBOR, (b) Sterling, SONIA, (c) or any Alternative Currency Successor Rate established in connection therewith and (b) Euros, EURIBOR, and (d) Canadian Dollars, the CDOR Rate (or any Alternative Currency Successor Rate established in connection therewith), as applicable.

“Removal Effective Date” has the meaning specified in Section 9.06(b).

“Reportable Event” means an event described in Section 4043(c) of ERISA with respect to a Plan that is subject to Title IV of ERISA other than those events as to which the 30-day notice period is waived under PBGC Regulation Section 4043.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Loans (other than Swing Line Loans), a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, Lenders holding in the aggregate more than 50% of (a) the unfunded Revolving Commitments, the Term A-3 Loan Commitments, the outstanding Loans, L/C Obligations and participations in outstanding Swing Line Loans and L/C Obligations or (b) if the Revolving Commitments have been terminated, the Term A-3 Loan Commitments, the outstanding Loans, L/C Obligations and participations in outstanding Swing Line Loans and L/C Obligations. The unfunded Revolving Commitments and the Term A-3 Loan Commitments of, and the outstanding Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided that the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination.

“Rescindable Amount” has the meaning specified in Section 2.12(b)(ii).

“Resignation Effective Date” has the meaning specified in Section 9.06(a).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restricted” means, when referring to cash or Cash Equivalents of the Company or any of its Restricted Subsidiaries, that such cash or Cash Equivalents (i) appear (or would be required to appear) as “restricted” on a consolidated balance sheet of the Company or of any such Restricted Subsidiary (unless such appearance is related to the Loan Documents or Liens created thereunder), (ii) are subject to any

Lien in favor of any Person (other than the Administrative Agent for the benefit of the Lenders) or (iii) are not otherwise generally available for use by the Company or such Restricted Subsidiary.

**“Restricted Subsidiaries”** means each Subsidiary that is not an Unrestricted Subsidiary.

**“Revaluation Date”** means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of an Alternative Currency Loan, (ii) each date of a continuation of an Alternative Currency Term Rate Loan pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall reasonably determine or the Required Lenders shall reasonably require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, and (iv) such additional dates as the Administrative Agent or the L/C Issuer shall reasonably determine or the Required Lenders shall reasonably require.

**“Revolving A Commitment”** means, as to each Revolving A Lender, its obligation to (a) make Revolving A Loans to the Borrowers pursuant to Section 2.01(a), (b) purchase participations in L/C Obligations and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving A Lender’s name on Schedule 2.01, in the Assignment and Assumption pursuant to which such Revolving A Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.18, as applicable, as such amount may be increased or decreased from time to time in accordance with this Agreement.

**“Revolving A Exposure”** means the aggregate Outstanding Amount of the Revolving A Loans of any Revolving A Lender, plus such Revolving A Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations plus such Revolving A Lender’s Applicable Percentage of the Outstanding Amount of all Swing Line Loans.

**“Revolving A Lender”** means, at any time, (a) so long as any Revolving A Commitment is in effect, any Lender that has a Revolving A Commitment at such time or (b) if the Revolving A Commitments have terminated or expired, any Lender that has a Revolving A Loan or a participation in L/C Obligations or Swing Line Loans at such time.

**“Revolving A Loan”** has the meaning specified in Section 2.01(a).

**“Revolving B Commitment”** means, as to each Revolving B Lender, its obligation to make Revolving B Loans to the Borrowers pursuant to Section 2.01(b), in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving B Lender’s name on Schedule 2.01, in the Assignment and Assumption pursuant to which such Revolving B Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.18, as applicable, as such amount may be increased or decreased from time to time in accordance with this Agreement.

**“Revolving B Exposure”** means the aggregate Outstanding Amount of the Revolving B Loans of any Revolving B Lender.

**“Revolving B Lender”** means, at any time, (a) so long as any Revolving B Commitment is in effect, any Lender that has a Revolving B Commitment at such time or (b) if the Revolving B Commitments have terminated or expired, any Lender that has a Revolving B Loan at such time.

**“Revolving B Loan”** has the meaning specified in Section 2.01(b).

**“Revolving Commitment”** means a Revolving A Commitment and/or a Revolving B Commitment, as applicable.

**“Revolving Lender”** means any Revolving A Lender and any Revolving B Lender.

**"Revolving Loan"** means a Revolving A Loan and/or a Revolving B Loan, as applicable.

**"Revolving Note"** has the meaning specified in **Section 2.11(a)**.

**"S&P"** means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

**"Same Day Funds"** means (a) with respect to disbursements and payments in Dollars, immediately available funds and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be reasonably determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

**"Sanction(s)"** means any sanctions administered or enforced by the government of the United States of America (including without limitation, OFAC), the United Nations Security Council, the European Union, or Her Majesty's Treasury ("**HMT**").

**"Scheduled Unavailability Date"** has the meaning specified in **Section 3.03(c)(ii)**.

**"SEC"** means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

**"Second Amendment"** means that certain Second Amendment to Credit Agreement, dated as of the Second Amendment Effective Date, among the Company, the Canadian Borrower, the Guarantors party thereto, the Lenders party thereto, the L/C Issuer, the Swing Line Lender and the Administrative Agent.

**"Second Amendment Effective Date"** means July 15, 2021.

**"Secured Cash Management Agreement"** means any Cash Management Agreement that is entered into by and between any Credit Party or any of its Restricted Subsidiaries and any Cash Management Bank with respect to such Cash Management Agreement.

**"Secured Party Designation Notice"** means a notice from any Swap Provider substantially in the form of **Exhibit I**.

**"Secured Swap Agreement"** means any Swap Agreement that is entered into by and between a Credit Party or any of its Restricted Subsidiaries and a Swap Provider. For the avoidance of doubt, a holder of Obligations in respect of Secured Swap Agreements shall be subject to the last paragraph of **Section 8.02** and **Section 9.11**.

**"Security Agreement"** means the security and pledge agreement, dated as of the Closing Date, executed in favor of the Administrative Agent for the benefit of the holders of the Obligations by each of the Credit Parties.

**"Shareholder Subordinated Note"** means an unsecured junior subordinated note issued by the Company (and not guaranteed or supported in any way by any Restricted Subsidiary of the Company), which note shall be in the form of **Exhibit L**; **provided** that additional provisions may be included so long as such provisions do not adversely affect the interests of the Lenders in a material manner and are not in conflict with the provisions of this Agreement or any other Loan Document and are otherwise reasonably acceptable to the Administrative Agent.

**"Shareholders' Rights Plan"** means a plan approved by the board of directors of the Company providing for the distribution to shareholders of the Company of rights to purchase Preferred Stock of the Company (which Preferred Stock need not be Qualified Preferred Stock) on such terms and conditions as are customary for similar plans adopted by publicly-held companies of comparable size to the Company.

“Significant Asset Sale” means each Disposition which generates Net Cash Proceeds of at least \$75,000,000.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” means: (a) with respect to Daily Simple SOFR, 0.10% (10 basis points); and (b) with respect to Term SOFR, (i) 0.10% (10 basis points) for an Interest Period of one month’s duration ~~and~~, (ii) 0.10% (10 basis points) for an Interest Period of three months’ duration, ~~and (iii) for any other interest period agreed to by all requisite Lenders pursuant to the definition of “Interest Period”, such amount as is agreed to by all such Lenders for such interest period.~~

~~“SOFR Early Opt-in” means the Administrative Agent and the Borrowers have elected to replace LIBOR pursuant to (a) an Early Opt-in Election, (b) Section 3.03(b)(i), and (c) clause (a) of the definition of “Benchmark Replacement”.~~

“Solvency Certificate” means a certificate executed by the chief financial officer of the Company, substantially in the form of Exhibit K.

“SONIA” means, with respect to any applicable determination date, the Sterling Overnight Index Average Reference Rate published on the fifth (5<sup>th</sup>) Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); provided, that, if such determination date is not a Business Day, SONIA means such rate that applied on the first (1<sup>st</sup>) Business Day immediately prior thereto.

“SONIA Adjustment” means, with respect to SONIA, 0.0326% (3.26 basis points).

“Special Notice Currency” means at any time an Alternative Currency, other than the currency of a country (a) that is a member of the Organization for Economic Cooperation and Development at such time and (b) is located in North America or Europe.

“Specified Credit Party” means any Credit Party that is not an “eligible contract participant” under the Commodity Exchange Act.

“Specified Event of Default” means an Event of Default pursuant to Section 8.01(a), Section 8.01(b) or Section 8.01(g).

“Specified Refinancing Term Loans” has the meaning set forth in Section 2.17.

“Specified Transaction” means any Permitted Acquisition, any other Investment in a Person, any Significant Asset Sale, any Dividend, any Debt Repurchase, any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or any other event that by the terms of this Agreement requires compliance on a “Pro Forma Basis” with a test or covenant hereunder.

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent, or by the parent and one or more subsidiaries of the parent, and the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company.

“Successor Rate” has the meaning specified in Section 3.03(c).

“Supply Chain Financing Transaction” means any financing transaction pursuant to which accounts receivables due from customers of the Company or any Restricted Subsidiary are sold or discounted in connection with customer supply chain financing agreements that is both off-balance sheet and non-recourse to the Company or any Restricted Subsidiary.

“Supported QFC” has the meaning set forth in Section 10.21.

“Sustainability Coordinator” means BofA Securities, in its capacity as the sustainability coordinator.

“Sustainability Linked Loan Principles” means the Sustainability Linked Loan Principles (as published in May 2021 by the Loan Market Association, Asia Pacific Loan Market Association and Loan Syndications & Trading Association).

“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; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or the Restricted Subsidiaries shall be a Swap Agreement.

“Swap Obligation” means with respect to any Credit Party any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Provider” means any Person that, at the time it enters into a Swap Agreement is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Agreement, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreement, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Borrowing of Swing Line Loans pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit A-2 or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by an Authorized Officer of the Company.

“Swing Line Note” has the meaning specified in Section 2.11(a).

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$50,000,000 and (b) the Aggregate Revolving A Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving A Commitments.

**“Synthetic Lease Obligation”** means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

**“TARGET2”** means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

**“TARGET Day”** means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

**“Tax Allocation Agreements”** means any tax sharing or tax allocation agreements entered into by the Company or any of its Subsidiaries.

**“Taxes”** means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Term A-3 Lender”** means any Lender that holds a Term A-3 Loan Commitment and/or portion of the Term A-3 Loan at such time.

**“Term A-3 Loan”** means the Incremental Term Loan established pursuant to the Third Amendment.

**“Term A-3 Loan Availability Period”** means, with respect to the Term A-3 Loan Commitments, the period from and including the Third Amendment Effective Date to the earliest of (a) March 15, 2023, (b) the date of termination of all Term A-3 Loan Commitments in their entirety pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make its portion of the Term A-3 Loan pursuant to Section 8.01.

**“Term A-3 Loan Commitment”** means, as to each Term A-3 Lender, its obligation to make its portion of the Term A-3 Loan to the Company pursuant to Section 2.01(e), in an aggregate principal amount set forth opposite such Term A-3 Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Term A-3 Lender becomes a party hereto, as applicable. The aggregate principal amount of the Term A-3 Loan Commitments of all of the Term A-3 Lenders as in effect on the Third Amendment Effective Date is THREE HUNDRED MILLION DOLLARS (\$300,000,000).

**“Term A-3 Loan Ticking Fee”** has the meaning specified in Section 2.09(b).

**“Term A-3 Note”** has the meaning specified in Section 2.11(a).

**“Term CORRA”** means, for the applicable corresponding tenor, the forward-looking term rate based on CORRA that has been selected or recommended by the Relevant Canadian Governmental Body, and that is published by an authorized benchmark administrator and is displayed on a screen or other information service, as identified or selected by the Administrative Agent in its reasonable discretion at approximately a time and as of a date prior to the commencement of an Interest Period determined by the Administrative Agent in its reasonable discretion in a manner substantially consistent with market practice.

**“Term CORRA Notice”** means the notification by the Administrative Agent to the Lenders and the Borrowers of the occurrence of a Term CORRA Transition Event.

“Term CORRA Transition Date” means, in the case of a Term CORRA Transition Event, the date that is set forth in the Term CORRA Notice provided to the Lenders and the Borrowers, for the replacement of the then-current Canadian Benchmark with the Canadian Benchmark Replacement described in clause (a)(i) of such definition, which date shall be at least thirty (30) Business Days from the date of the Term CORRA Notice.

“Term CORRA Transition Event” means the determination by the Administrative Agent that (a) Term CORRA has been recommended for use by the Relevant Canadian Governmental Body, and is determinable for any Available Tenor, (b) the administration of Term CORRA is administratively feasible for the Administrative Agent, (c) a Canadian Benchmark Replacement, other than Term CORRA, has replaced the CDOR Rate in accordance with Section 3.03(b), and (d) the Borrowers have provided a written request to Administrative Agent to transition to Term CORRA.

“Term Lender” means any Lender that holds a portion of the Initial Term Loan, a portion of the Initial Term A-2 Loan, a portion of the Term A-3 Loan or the Term A-3 Loan Commitment, a portion of any Incremental Term Loans, a portion of any Extended Term Loan or a portion of any Specified Refinancing Term Loan at such time.

“Term Loan” means the Initial Term Loan, the Initial Term A-2 Loan, the Term A-3 Loan, an Incremental Term Loan, an Extended Term Loan or a Specified Refinancing Term Loan.

“Term Loan Commitment” means, as to each Term Lender, such Term Lender’s obligation to make its portion of any Term Loan to the applicable Borrower.

“Term SOFR” means:

(a) (a) with respect to a Benchmark Replacement for purposes of Section 3.03(b), for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two (2) Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body; and

(b) with respect to the Term A-3 Loan, (i) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided, that, if the rate is not published prior to 11:00 a.m. on such determination date, then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto; in each case, plus the applicable SOFR Adjustment; and (ii) for any interest calculation with respect to a Base Rate Loan ~~that is a Term A-3 Loan~~ on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one (1) month commencing that day; provided, that, if Term SOFR determined in accordance with either of the foregoing clause (i) or clause (ii) would otherwise be less than zero, Term SOFR shall be deemed zero for purposes of this Agreement.

“Term SOFR Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Term SOFR Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, “Term SOFR” and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines (in

consultation with the Company) is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Term SOFR Loan” means ~~any portion of the Term A-3a~~ Loan that is denominated in Dollars and that bears interest at a rate based on clause ~~(b)(i)~~ of the definition of “Term SOFR”.

“Term SOFR Replacement Date” has the meaning specified in Section 3.03(d).

“Term SOFR Scheduled Unavailability Date” has the meaning specified in Section 3.03(d).

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Term SOFR Successor Rate” has the meaning specified in Section 3.03(d).

“Third Amendment” means that certain Third Amendment to Credit Agreement, dated as of the Third Amendment Effective Date, among the Company, the Canadian Borrower, the Guarantors party thereto, the Lenders party thereto, and the Administrative Agent.

“Third Amendment Effective Date” means September 8, 2022.

“Total Revolving A Outstandings” means the aggregate Outstanding Amount of all Revolving A Loans, all Swing Line Loans and all L/C Obligations.

“Total Revolving B Outstandings” means the aggregate Outstanding Amount of all Revolving B Loans.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans, all Swing Line Loans and all L/C Obligations.

“Transactions” means the execution, delivery and performance by the Borrowers of this Agreement, the borrowing of Loans and the use of the proceeds thereof.

“Type” means, with respect to a Loan, its character as a Base Rate Loan, a Canadian Prime Rate Loan, a ~~LIBOR Rate Loan, a~~ Term SOFR Loan, an Alternative Currency Daily Rate Loan or an Alternative Currency Term Rate Loan.

“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 any mandatory provisions of law, the perfection, the effect of perfection or non-perfection or priority of the security interest granted to the Administrative Agent pursuant to any Collateral Document in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the state of New York, then the term “UCC” shall mean the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**"UK Resolution Authority"** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**"Unfunded Current Liability"** of any Plan means the amount, if any, by which the actuarial present value of the accumulated plan benefits under the Plan as of the close of its most recent plan year exceeds the fair market value of the assets allocable thereto, each determined in accordance with Statement of Financial Accounting Standards No. 87, based upon the actuarial assumptions used by the Plan's actuary in the most recent annual valuation of the Plan.

**"United Kingdom"** and **"UK"** mean the United Kingdom of Great Britain and Northern Ireland.

**"United States"** and **"U.S."** mean the United States of America.

**"Unreimbursed Amount"** has the meaning specified in Section 2.03(c)(i).

**"Unrestricted Cash"** means, as of any date of determination, subject to the limitations in Section 1.03(a), the aggregate amount (without duplication) of cash and Cash Equivalents that are not Restricted of the Credit Parties and the Foreign Subsidiaries to the extent the same would be reflected on a consolidated balance sheet of the Company if the same were prepared as of such date.

**"Unrestricted Subsidiaries"** means each Subsidiary (other than a Borrower) designated by the Company as an "Unrestricted Subsidiary" pursuant to Section 6.14.

**"U.S. Government Securities Business Day"** means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

**"U.S. Person"** means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

**"U.S. Special Resolution Regimes"** has the meaning set forth in Section 10.21.

**"U.S. Tax Compliance Certificate"** has the meaning specified in Section 3.01(e)(ii)(B)(III).

**"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.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or

otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Notwithstanding anything to the contrary herein, to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including any Consolidated Secured Net Leverage Ratio test, any Consolidated Total Net Leverage Ratio test, any Consolidated Interest Coverage Ratio test) or basket (including the amount of Consolidated Total Assets or the amount of Consolidated EBITDA), (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default) as a condition to the consummation of any Limited Conditionality Transaction or incurrence of Indebtedness in connection therewith, (iii) a determination of the amount of the Available Amount, the Available JV Basket Amount or any other basket based on Consolidated Total Assets or Consolidated EBITDA or (iv) a determination as to whether the representations and warranties contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects), the determination of whether the relevant condition is satisfied may be made, at the election of the Company, at the time of (on the basis of the financial statements for the most recently ended four quarter period for which financial statements have been delivered) the execution of the definitive agreement with respect to such Limited Conditionality Transaction (the "LCT Test Date"), after giving effect to the relevant Limited Conditionality Transaction and related incurrence of Indebtedness, on a Pro Forma Basis; provided that notwithstanding the foregoing, (A) the absence of Specified Event of Default shall be a condition to the consummation of any such Limited Conditionality Transaction and incurrence of any related Indebtedness, (B) if the proceeds of an Incremental Term Loan are to be used to finance a Limited Conditionality Transaction, then such financing may be subject to customary "SunGard" or "certain funds" conditionality and the representations and warranties required shall be limited to customary "Specified Representations" and such other representations and warranties as may be required by the applicable lenders providing such Incremental Term Loan and (C) the Limited Conditionality Transaction and the related Indebtedness to be incurred (and any associated Lien) and the use of proceeds thereof (and the consummation of any Acquisition or Investment) shall be deemed incurred and/or applied at the LCT Test Date (until such time as the Indebtedness is actually incurred or the applicable definitive agreement is terminated without actually consummating the applicable Limited Conditionality Transaction) and outstanding thereafter for purposes of pro forma compliance (other than with respect to Dividends or Debt Repurchases of Junior Debt) with any applicable calculation of the financial covenants set forth in Sections 7.08 and 7.09, or the amount or availability of the Available Amount, the Available JV Basket Amount or any other basket based on Consolidated EBITDA or Consolidated Total Assets, as the case may be (it being understood and agreed that with respect to

any such ratio test or basket to be used to effect a Dividend or Debt Repurchase of Junior Debt, the Company shall demonstrate compliance with the applicable test both after giving effect to the applicable Limited Conditionality Transaction and assuming that such transaction had not occurred). For the avoidance of doubt, if any of such ratios or amounts for which compliance was determined or tested as of the LCT Test Date are thereafter exceeded as a result of fluctuations in such ratio or amount (including due to fluctuations in Consolidated EBITDA), at or prior to the consummation of the relevant Limited Conditionality Transaction, such ratios or amounts will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant Limited Conditionality Transaction is permitted to be consummated or taken.

(e) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

(f) Any baskets utilized under this Agreement prior to the Second Amendment Effective Date shall each be deemed replenished in their entirety and available in full under this Agreement as of the Second Amendment Effective Date.

### **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Credit Parties and their Restricted Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded. Notwithstanding anything contained herein to the contrary, with respect to determining the permissibility of the incurrence of any Indebtedness for borrowed money (including, for the avoidance of doubt, any incremental facility established pursuant to Section 2.18 and any Incremental Equivalent Debt) and the calculation of the financial covenants set forth in Sections 7.08 and 7.09 on a Pro Forma Basis after giving effect to the incurrence of such Indebtedness, (i) the proceeds thereof shall not be counted as Unrestricted Cash for the purposes of clause (b) of the definition of Consolidated Debt and (ii) all Incremental Term Loans and Incremental Equivalent Debt (and, in each case, any Permitted Refinancings thereof) shall be deemed to constitute Consolidated Debt secured by a Lien on any property of the Company and its any Restricted Subsidiaries.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio, requirement or provision set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent and the Company shall negotiate in good faith to amend such ratio, requirement or provision to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders not to be unreasonably withheld, conditioned or delayed); provided that, until so amended, (i) such ratio, requirement or provision shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Company and its Restricted Subsidiaries or to the determination of any amount for the Company and its Restricted Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Company is required to consolidate pursuant to FASB Interpretation No. 46 – Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) as if such variable interest entity were a Restricted Subsidiary as defined herein.

#### **1.04 Rounding.**

**Article IX** Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated in accordance with this Agreement and, if necessary, by carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

#### **1.05 Exchange Rates; Currency Equivalents; Rates.**

(a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Dollar Equivalent shall become effective as of such Revaluation Date and shall be the Dollar Equivalent of such amounts until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of an Alternative Currency Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, rounded upward to the nearest 1000 units), as reasonably determined by the Administrative Agent or the L/C Issuer, as the case may be.

(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including any Term SOFR Successor Rate, any Benchmark Replacement, or any Successor Rate Successor Rate, or any Canadian Benchmark Replacement) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Term SOFR Conforming Changes, any Benchmark Replacement Alternative Currency Conforming Changes, or any Alternative Currency Canadian Benchmark Replacement Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including any Term SOFR Successor Rate, any Benchmark Replacement, or any Successor Rate Successor Rate, or any Canadian Benchmark Replacement) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Term SOFR Successor Rate, any Benchmark Replacement, or any Successor Rate Successor Rate, or any Canadian Benchmark Replacement) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other Person 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 other action or omission

related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

#### **1.06 Additional Alternative Currencies.**

(a) The Company may from time to time request that Alternative Currency Loans be made under the Aggregate Revolving A Commitments and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency"; provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Alternative Currency Loans, such request shall be subject to the approval of the Administrative Agent and each Revolving A Lender; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., 15 Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Alternative Currency Loans, the Administrative Agent shall promptly notify each Revolving A Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Revolving A Lender (in the case of any such request pertaining to Alternative Currency Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., seven Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Alternative Currency Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Revolving A Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Revolving A Lender or the L/C Issuer, as the case may be, to permit Alternative Currency Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Revolving A Lenders consent to making Alternative Currency Loans in such requested currency and the Administrative Agent and such Revolving A Lenders reasonably determine that an appropriate interest rate is available to be used for such requested currency, the Administrative Agent shall so notify the Company and (i) the Administrative Agent, such Revolving A Lenders and the Company may amend the definition of Alternative Currency Daily Rate or Alternative Currency Term Rate to the extent necessary to add the applicable rate for such currency and any applicable adjustment for such rate and (ii) to the extent the definition of Alternative Currency Daily Rate or Alternative Currency Term Rate, as applicable, has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency for purposes of any Borrowings of Alternative Currency Loans. If the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Company and (A) the Administrative Agent, the L/C Issuer and the Company may amend the definition of Alternative Currency Daily Rate or Alternative Currency Term Rate, as applicable, to the extent necessary to add the applicable rate for such currency and any applicable adjustment for such rate and (B) to the extent the definition of Alternative Currency Daily Rate or Alternative Currency Term Rate, as applicable, has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.06, the Administrative Agent shall promptly so notify the Company.

#### **1.07 Change of Currency.**

(a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful

currency after the Closing Date shall be redenominated into Euro at the time of such adoption. If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as agreed to by the Administrative Agent and the Company from time to time to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as agreed to by the Administrative Agent and the Company from time to time to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

**1.08 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**1.09 Letter of Credit Amounts.**

**Article X** 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, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.10 Certain Determinations.**

**Article XI** For purposes of determining compliance with any of the covenants set forth in Article VI or Article VII (including in connection with any Incremental Term Loan or Incremental Equivalent Debt) at any time (whether at the time of incurrence or thereafter), any Lien, Investment, Indebtedness, Disposition, Dividend or Affiliate transaction meets the criteria of one, or more than one, of the categories permitted pursuant to Article VI or Article VII (including in connection with any Incremental Term Loan or Incremental Equivalent Debt), the Company (i) shall in its sole discretion determine under which category such Lien (other than Liens with respect to the Loans), Investment, Indebtedness (other than Indebtedness consisting of the Loans), Disposition, Dividend or Affiliate transaction (or, in each case, any portion thereof) is permitted and may classify or reclassify such transaction or item (or portion thereof) in any category and (ii) shall be permitted to make any such determination or redetermination or classification or reclassification at such time and from time to time as it may determine and without notice to the Administrative Agent or any Lender.

**Article XII** For purposes of determining the permissibility of any action, change, transaction or event that by the terms of the Loan Documents requires a calculation of any financial ratio or test (including the Consolidated Total Net Leverage Ratio, the Consolidated Secured Net Leverage Ratio or the Consolidated Interest Coverage Ratio), such financial ratio or test shall, except as expressly permitted under this Agreement, be calculated at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

**Article XIII** For purposes of determining compliance with any provision of this Agreement which requires compliance on a pro forma basis with the financial covenant set forth in Section 7.09 prior to delivery of financial statements for the fiscal quarter of the Company ending October 2, 2022, such compliance shall be determined by reference to the financial statements delivered by the Company pursuant to Section 6.01(b) for the fiscal quarter of the Company ending July 3, 2022, and the Company shall be deemed to be in compliance on a pro forma basis for purposes of such determination so long as the Consolidated Total Net Leverage Ratio on a pro forma basis is not greater than 4.25 to 1.00.

## ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

### 2.01 Loans.

(a) Subject to the terms and conditions set forth herein, each Revolving A Lender severally agrees to make loans (each such loan, a “Revolving A Loan”) to the Borrowers in Dollars and one or more Alternative Currencies from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving A Commitment; provided, however, that after giving effect to any Borrowing of Revolving A Loans, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (ii) the aggregate Revolving A Exposure of any Lender shall not exceed such Lender’s Revolving A Commitment, (iii) the aggregate Outstanding Amount of all Revolving Loans made to Foreign Borrowers shall not exceed the Foreign Borrower Sublimit and (iv) the Total Revolving A Outstandings shall not exceed the Aggregate Revolving A Commitments. Within the limits of each Lender’s Revolving A Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving A Loans may be Base Rate Loans, ~~LIBOR Rate~~Term SOFR Loans, Alternative Currency Daily Rate Loans or Alternative Currency Term Rate Loans, or a combination thereof, as further provided herein.

(b) Subject to the terms and conditions set forth herein, each Revolving B Lender severally agrees to make loans (each such loan, a “Revolving B Loan”) to the Borrowers in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving B Commitment; provided, however, that after giving effect to any Borrowing of Revolving B Loans, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (ii) the aggregate Revolving B Exposure of any Lender shall not exceed such Lender’s Revolving B Commitment, (iii) the aggregate Outstanding Amount of all Revolving Loans made to Foreign Borrowers shall not exceed the Foreign Borrower Sublimit and (iv) the Total Revolving B Outstandings shall not exceed the Aggregate Revolving B Commitments. Within the limits of each Lender’s Revolving B Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving B Loans may be Base Rate Loans or ~~LIBOR Rate~~Term SOFR Loans, or a combination thereof, as further provided herein.

(c) Subject to the terms and conditions set forth herein, each Lender severally agrees to make its portion of a term loan (the “Initial Term Loan”) to the Company in Dollars on the Second Amendment Effective Date in an amount not to exceed such Lender’s Initial Term Loan Commitment by (i) continuing some or all of its portion of the Initial Term Loan (as defined in this Agreement immediately prior to giving effect to the Second Amendment) outstanding immediately prior to the Second Amendment Effective Date, (ii) exchanging some or all of its portion of the Incremental Term A-1 Loan (as defined in the Incremental Term Loan and Increase Agreement (as defined in this Agreement immediately prior to giving effect to the Second Amendment)) outstanding immediately prior to the Second Amendment Effective Date, and/or (iii) advancing additional borrowings of the Initial Term Loan on the Second Amendment Effective Date. Amounts repaid on the Initial Term Loan may not be reborrowed. The Initial Term Loan may consist of Base Rate Loans or ~~LIBOR Rate~~Term SOFR Loans, or a combination thereof, as further provided herein.

(d) Subject to the terms and conditions set forth herein, each Lender severally agrees to make its portion of a term loan (the "Initial Term A-2 Loan") to the Canadian Borrower in Canadian Dollars on the Second Amendment Effective Date in an amount not to exceed such Lender's Initial Term A-2 Loan Commitment by (i) continuing some or all of its portion of the Incremental Term A-2 Loan (as defined in this Agreement immediately prior to giving effect to the Second Amendment) outstanding immediately prior to the Second Amendment Effective Date, and/or (ii) advancing additional borrowings of the Initial Term A-2 Loan on the Second Amendment Effective Date. Amounts repaid on the Initial Term A-2 Loan may not be reborrowed. The Initial Term A-2 Loan may consist of Canadian Prime Rate Loans and/or Alternative Currency Term Rate Loans in Canadian Dollars, or a combination thereof, as further provided herein.

(e) Subject to the terms and conditions set forth herein, each Term A-3 Lender severally agrees to make its portion of the Term A-3 Loan to the Company in Dollars in one (1) advance on any Business Day during the Term A-3 Loan Availability Period in an aggregate amount not to exceed such Term A-3 Lender's Term A-3 Loan Commitment. The Borrowing of the Term A-3 Loan shall consist of each portion of the Term A-3 Loan made simultaneously by the Term A-3 Lenders in accordance with their respective Term A-3 Loan Commitments. Amounts repaid on the Term A-3 Loan may not be reborrowed. The Term A-3 Loan may consist of Base Rate Loans or Term SOFR Loans, or a combination thereof, as further provided herein.

(f) Subject to Section 2.18, on the effective date of any Incremental Term Loan Lender Joinder Agreement, each Incremental Term Lender party to such Incremental Term Loan Lender Joinder Agreement severally agrees to make its portion of a term loan (each, an "Incremental Term Loan") in a single advance to the applicable Borrower in the amount of its respective Incremental Term Loan Commitment for such Incremental Term Loan as set forth in the applicable Incremental Term Loan Lender Joinder Agreement; provided, however, that after giving effect to such advances, the Outstanding Amount of such Incremental Term Loans shall not exceed the aggregate amount of the Incremental Term Loan Commitments set forth in the applicable Incremental Term Loan Lender Joinder Agreement of the applicable Incremental Term Lenders. Each Incremental Term Loan prepaid or repaid may not be reborrowed. Each Incremental Term Loan may be Base Rate Loans, Canadian Prime Rate Loans, ~~LIBOR Rate~~ Term SOFR Loans, Alternative Currency Daily Rate Loans or Alternative Currency Term Rate Loans, as further provided herein.

(g) The Company shall use commercially reasonable efforts to the extent practicable to allocate Borrowings of Revolving Loans denominated in Dollars such that ratable percentages are outstanding on an approximate basis under the Revolving A Commitments and the Revolving B Commitments.

## **2.02 Borrowings, Conversions and Continuations.**

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of a ~~LIBOR Rate~~ Loan, a Term SOFR Loan, or an Alternative Currency Term Rate Loan shall be made upon the applicable Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than (i) 11:00 a.m. on the requested date of any Borrowings of Base Rate Loans or Canadian Prime Rate Loans, (ii) 1:00 p.m. three Business Days prior to the requested date of any ~~Borrowing of, conversion to or continuation of LIBOR Rate Loans, of any conversion of LIBOR Rate Loans to Base Rate Loans or of any~~ conversion of Alternative Currency Loans denominated in Canadian Dollars to Canadian Prime Rate Loans, (iii) 1:00 p.m. two Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans, and (iv) 11:00 a.m. four Business Days prior to the requested date of any Borrowing of Alternative Currency Loans or any continuation of Alternative Currency Term Rate Loans (or five Business Days in the case of a Special Notice Currency); provided, however, that if such Borrower wishes to request ~~LIBOR Rate~~ Loans, Term SOFR

Loans—or Alternative Currency Term Rate Loans having an Interest Period other than a duration provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than (i) 1:00 p.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation of ~~LIBOR Rate Loans~~—or Term SOFR Loans, or (ii) 11:00 a.m. five Business Days (or six Business Days in the case of a Special Notice Currency) prior to the requested date of such Borrowing, conversion or continuation of Alternative Currency Term Rate Loans, in each case, whereupon the Administrative Agent shall give prompt notice to the applicable Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. In the case of a request pursuant to the proviso in the preceding sentence, not later than (i) 1:00 p.m. three Business Days before the requested date of such Borrowing, conversion or continuation of ~~LIBOR Rate Loans~~—or Term SOFR Loans, or (ii) 11:00 a.m. four Business Days (or five Business Days in the case of a Special Notice Currency) prior to the requested date of such Borrowing, conversion or continuation of Alternative Currency Term Rate Loans, in each case, the Administrative Agent shall notify such Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the applicable Lenders. Each Borrowing of, conversion to or continuation of ~~LIBOR Rate Loans~~, Term SOFR Loans—or Alternative Currency Loans, as applicable, shall be in a principal amount of the Dollar Equivalent of \$5,000,000 (or C\$5,000,000, in the case of any Alternative Currency Loans denominated in Canadian Dollars) or a whole multiple of the Dollar Equivalent of \$1,000,000 in excess thereof (or C\$1,000,000, in the case of any Alternative Currency Loans denominated in Canadian Dollars) (or, if less, the entire principal thereof then outstanding); provided, that, in connection with a simultaneous Borrowing of, conversion to or continuation of ~~LIBOR Rate~~Term SOFR Loans that are Revolving A Loans and Revolving B Loans, the foregoing minimum and multiple amounts shall apply to the principal amount such Revolving A Loans and such Revolving B Loans, taken a whole. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal thereof then outstanding); provided, that, in connection with a simultaneous Borrowing of or conversion to Base Rate Loans that are Revolving A Loans and Revolving B Loans, the foregoing minimum and multiple amounts shall apply to the principal amount such Revolving A Loans and such Revolving B Loans, taken a whole. Each Borrowing of or conversion to Canadian Prime Rate Loans shall be in a principal amount of C\$500,000 or a whole multiple of C\$100,000 in excess thereof (or, if less, the entire principal thereof then outstanding). Each Loan Notice shall specify (i) whether such Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of ~~LIBOR Rate Loans~~—Term SOFR Loans,—or Alternative Currency Term Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto, (vi) the currency of the Loans to be borrowed and (vii) whether the Loans to be borrowed are Revolving A Loans, Revolving B Loans, the Initial Term Loan, the Initial Term A-2 Loan, the Term A-3 Loan or an Incremental Term Loan. If the applicable Borrower fails to specify a Type of Loan in a Loan Notice or if such Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans (or, in the case of the Initial Term A-2 Loan, Canadian Prime Rate Loans); provided, however, that in the case of a failure to timely request a continuation of Alternative Currency Term Rate Loans, such Loans shall be continued as Alternative Currency Term Rate Loans in their original currency with an Interest Period of one month. Any such automatic conversion of Loans to Base Rate Loans or Canadian Prime Rate Loans, as applicable, shall be effective as of the last day of the Interest Period then in effect with respect to such Loans. If the applicable Borrower requests a Borrowing of, conversion to, or continuation of ~~LIBOR Rate Loans~~, Term SOFR Loans,—or Alternative Currency Term Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Loan may be converted into or continued as a Loan denominated in a different currency.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each applicable Lender of the amount (and currency) of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the

applicable Borrower, the Administrative Agent shall notify each applicable Lender of the details of any automatic conversion to Base Rate Loans or Canadian Prime Rate Loans, as applicable, or continuation of ~~LIBOR Rate Loans~~, Term SOFR Loans, or Alternative Currency Term Rate Loans, in each case as described in the preceding subsection. In the case of a Borrowing, each applicable Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than (i) 1:00 p.m., in the case of any Loan denominated in Dollars, (ii) 1:00 p.m., in the case of any Canadian Prime Rate Loans, or (iii) the Applicable Time specified by the Administrative Agent in the case of any Loan denominated in an Alternative Currency, in each case on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of such Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by such Borrower; provided, however, that if, on the date of a Borrowing of Revolving A Loans, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings and second, shall be made available to such Borrower as provided above.

(c) Except as otherwise provided herein, a ~~LIBOR Rate Loan~~, a Term SOFR Loan or an Alternative Currency Term Rate Loan may be continued or converted only on the last day of an Interest Period for such Loan. During the existence of an Event of Default, at the request of the Required Lenders or the Administrative Agent, (i) no Loans may be requested as, converted to or continued as ~~LIBOR Rate Loans or~~ Term SOFR Loans and (ii) no Loans may be requested as, or converted to Alternative Currency Daily Rate Loans or converted to or continued as Alternative Currency Term Rate Loans. During the existence of an Event of Default and subject to the immediately preceding sentence, Alternative Currency Term Rate Loans may be maintained and at the end of the Interest Period with respect thereto shall automatically be continued as Alternative Currency Term Rate Loans with an Interest Period of one month.

(d) The Administrative Agent shall promptly notify the applicable Borrower and the applicable Lenders of the interest rate applicable to any Interest Period for ~~LIBOR Rate Loans~~, Term SOFR Loans, or Alternative Currency Term Rate Loans, as applicable, upon determination of such interest rate. At any time that Base Rate Loans or Canadian Prime Rate Loans are outstanding, the Administrative Agent shall notify the Company and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate or Canadian Prime Rate, as applicable, promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than fifteen Interest Periods in effect with respect to all Loans.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Company, the Administrative Agent and such Lender.

## **2.03 Letters of Credit.**

### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving A Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or one or more Alternative Currencies for the account of the

Company or any of its Restricted Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving A Lenders severally agree to participate in Letters of Credit issued for the account of the Company or its Restricted Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (v) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (w) the Total Revolving A Outstandings shall not exceed the Aggregate Revolving A Commitments, (x) the aggregate Revolving A Exposure of any Revolving A Lender shall not exceed such Lender's Revolving A Commitment, (y) the aggregate amount of the outstanding Letters of Credit issued by the L/C Issuer shall not exceed the L/C Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Company or any Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Company or such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Company's and the applicable Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Company or such Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders under which such Letter of Credit is to be issued have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving A Lenders have approved such expiry date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more material policies of the L/C Issuer applicable to letters of credit generally applied on a consistent basis to similarly situated letter of credit applicants;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$100,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) except in the case of a Letter of Credit to be denominated in Dollars or an Alternative Currency, the L/C Issuer does not as of the issuance date of the requested Letter of Credit issue Letters of Credit in the requested currency; or

(F) any Revolving A Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its reasonable discretion) with the applicable Borrowers or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(b)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Revolving A Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the applicable Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by an Authorized Officer of such Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof (and in the absence of specification of currency shall be deemed to be a request for a Letter of Credit denominated in Dollars); (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be

presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may require. Additionally, the applicable Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving A Lender, the Administrative Agent or any Credit Party, at least two Business Days prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Company or the applicable Restricted Subsidiary or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving A Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving A Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If a Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer agrees to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the applicable Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving A Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date from the Administrative Agent, any Revolving A Lender or any Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the applicable Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the applicable Borrower shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the applicable Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that such Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the applicable Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. (or the Applicable Time with respect to a Letter of Credit to be reimbursed in an Alternative Currency) on the Business Day following receipt of such notice (each such date, an "Honor Date"), the applicable Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency (together with interest thereon). In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in Dollars pursuant to the second sentence in this Section 2.03(c)(i) and (B) the Dollar amount paid by the applicable Borrower, whether on the Honor Date (as a result of an error in calculating the Dollar amount to be paid by the applicable Borrower, but in any event, not as a result of any intraday fluctuation in a currency exchange rate) 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, such Borrower agrees, as a separate and independent obligation, to indemnify the L/C Issuer for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing. If the applicable Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving A Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Revolving A Lender's Applicable Percentage thereof. In such event, the Company shall be deemed to have requested a Borrowing of Base Rate Loans that are Revolving A Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 or the prior notice required therefor for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving A Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving A Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) to the Administrative Agent for the account of the L/C Issuer, in Dollars, at the Administrative Agent's Office for dollar-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving A Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans that are Revolving A Loans because the conditions set

forth in Section 4.02 cannot be satisfied, the Company shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving A Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving A Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving A Lender funds its Revolving A Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving A Lender's obligation to make Revolving A Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving A Lender's obligation to make Revolving A Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by a Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving A Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the Overnight Rate. A certificate of the L/C Issuer submitted to any Revolving A Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving A Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from a Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c) (i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving A Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such

demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Revolving A Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of each Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Restricted Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of any Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice any Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to any Borrower or any Restricted Subsidiary or in the relevant currency markets generally; or

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any Restricted Subsidiary.

**Article XIV** The applicable Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will immediately notify the L/C Issuer. The

applicable Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Revolving A Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Revolving A Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving A Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence, bad faith or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude such Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (ix) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, a Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit unless the L/C Issuer is prevented or prohibited from so paying as a result of any order or directive of any court or other Governmental Authority. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary and reasonably acceptable to the beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the applicable Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to any Borrower for, and the L/C Issuer's rights and remedies with respect to any Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any Law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such Law or practice.

(h) Letter of Credit Fees. The Company shall pay to the Administrative Agent for the account of each Revolving A Lender in accordance, subject to Section 2.15, with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") (i) for each commercial

Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit and (ii) for each standby Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily maximum amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. Letter of Credit Fees shall be (x) computed on a quarterly basis in arrears and (y) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Company shall pay directly to the L/C Issuer for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at the rate specified in the Fee Letter, computed on the Dollar Equivalent of the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Company and the L/C Issuer, computed on the Dollar Equivalent of the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the Dollar Equivalent of the actual daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit) and on a quarterly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. In addition, the Company shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Restricted Subsidiary, the applicable Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Restricted Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

## **2.04 Swing Line Loans.**

(a) Swing Line Facility. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Revolving A Lenders set forth in this Section 2.04, may in its sole discretion make loans (each such loan, a "Swing Line Loan") to the Domestic Borrowers in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit; provided, however, that (i) after giving effect to any Swing Line Loan, (A) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments,

(B) the Total Revolving A Outstandings shall not exceed the Aggregate Revolving A Commitments and (C) the aggregate Revolving A Exposure of any Revolving A Lender shall not exceed such Lender's Revolving A Commitment, (ii) no Domestic Borrower shall use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan and (iii) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall reasonably determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Domestic Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Revolving A Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving A Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Borrowing of Swing Line Loans shall be made upon the applicable Domestic Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Swing Line Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum principal amount of \$500,000 and integral multiples of \$100,000 in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving A Lender) prior to 2:00 p.m. on the date of the proposed Borrowing of Swing Line Loans (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the applicable Domestic Borrower.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the applicable Domestic Borrower (which hereby irrevocably requests and authorizes the Swing Line Lender to so request on its behalf), that each Revolving A Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans that are Revolving A Loans, but subject to the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice); provided that, after giving effect to such Borrowing, the Total Revolving A Outstandings shall not exceed the Aggregate Revolving A Commitments. The Swing Line Lender shall furnish the applicable Domestic Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving A Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section

2.04(c)(ii), each Revolving A Lender that so makes funds available shall be deemed to have made a Base Rate Loan that is a Revolving A Loan to the applicable Domestic Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Borrowing of Revolving A Loans in accordance with Section 2.04(c)(i), the request for Base Rate Loans that are Revolving A Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving A Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving A Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving A Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the Overnight Rate. A certificate of the Swing Line Lender submitted to any Revolving A Lender (through the Administrative Agent) with respect to any amounts owing under this clause (ii) shall be conclusive absent manifest error.

(iv) Each Revolving A Lender's obligation to make Revolving A Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, any Domestic Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving A Lender's obligation to make Revolving A Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such purchase or funding of risk participations shall relieve or otherwise impair the obligation of the Domestic Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving A Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving A Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving A Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Effective Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Domestic Borrowers for interest on the Swing Line Loans. Until each Revolving A Lender funds its Revolving A Loans that are Base Rate Loans or risk participation pursuant to this Section 2.04 to refinance such Revolving A Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Domestic Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

## **2.05 Prepayments.**

### **(a) Optional Prepayments.**

(i) Any Borrower may, upon notice from such Borrower to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Loans or Term Loans in whole or in part without premium or penalty; provided, in each case, that (u) such notice must be in a form acceptable to the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by an Authorized Officer of the applicable Borrower and be received by the Administrative Agent not later than (A) 1:00 p.m. ~~three Business Days prior to any date of prepayment of LIBOR Rate Loans, (B) 1:00 p.m.~~ two Business Days prior to any date of prepayment of Term SOFR Loans, ~~(CB)~~ 11:00 a.m. four Business Days (or five, in the case of prepayment of Loans denominated in Special Notice Currencies) prior to any date of prepayment of any Alternative Currency Loans, ~~(DC)~~ 11:00 a.m. on the date of prepayment of Base Rate Loans, and ~~(ED)~~ 11:00 a.m. on the date of prepayment of Canadian Prime Rate Loans; (v) any prepayment of ~~LIBOR Rate Loans,~~ Term SOFR Loans, or Alternative Currency Loans shall be in a principal amount of the Dollar Equivalent of \$5,000,000 (or C\$5,000,000, in the case of Alternative Currency Loans denominated in Canadian Dollars) or a whole multiple of the Dollar Equivalent of \$1,000,000 in excess thereof (or C\$1,000,000, in the case of Alternative Currency Loans denominated in Canadian Dollars) or, if less, the entire principal amount thereof then outstanding; (w) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; (x) any prepayment of Canadian Prime Rate Loans shall be in a principal amount of C\$500,000 or a whole multiple of C\$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; (y) any prepayment of the Term Loans (other than the Term A-3 Loan) shall be applied ratably to the Term Loans (other than the Term A-3 Loan) to the remaining principal amortization payments thereof as directed by such Borrower; and (z) any prepayment of the Term A-3 Loan shall be applied to the remaining principal amortization payments thereof as directed by the Company. Each such notice shall specify (1) the date and amount of such prepayment, (2) the Loans to be prepaid, (3) the Type(s) of Loans to be prepaid, (4) if ~~LIBOR Rate Loans,~~ Term SOFR Loans, or Alternative Currency Term Rate Loans are to be prepaid, the Interest Period(s) of such Loans, (5) the currencies of the Loans to be prepaid and (6) whether the Loans to be prepaid are Revolving A Loans, Revolving B Loans, the Initial Term Loan, the Initial Term A-2 Loan, the Term A-3 Loan, Incremental Term Loans or Specified Refinancing Term Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by a Borrower, such Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that, a notice of optional prepayment delivered by the applicable Borrower may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice of prepayment may be revoked by the applicable Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is

not satisfied. Any prepayment of a Loan shall be accompanied by all accrued interest on the amount prepaid, together with, in the case of any ~~LIBOR Rate Loan, any~~ Term SOFR Loan, and any Alternative Currency Loan, any additional amounts required pursuant to Section 3.05. Subject to Section 2.15, each such prepayment shall be applied to the Loans of the applicable Lenders in accordance with their respective Applicable Percentages.

(ii) Swing Line Loans. The Company may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory Prepayments of Loans.

(i) Revolving Commitments.

(A) If for any reason, including exchange rate fluctuations, the Total Revolving A Outstandings at any time exceed the Aggregate Revolving A Commitments then in effect, the Borrowers shall promptly following notice from the Administrative Agent prepay Revolving A Loans and/or the Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(i)(A) unless after the prepayment in full of the Revolving A Loans and the Swing Line Loans the Total Revolving A Outstandings exceed the Aggregate Revolving A Commitments then in effect.

(B) If for any reason the Total Revolving B Outstandings at any time exceed the Aggregate Revolving B Commitments then in effect, the Borrowers shall promptly following notice from the Administrative Agent prepay Revolving B Loans in an aggregate amount equal to such excess.

(ii) Asset Sales and Recovery Events. The Borrowers shall prepay the Term Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of any Asset Sale or Recovery Event to the extent such Net Cash Proceeds are not reinvested or committed to be reinvested in assets (including Permitted Acquisitions) that are useful in the business of the Company and its Restricted Subsidiaries within 365 days of the date of such Asset Sale or Recovery Event (it being understood that such prepayment shall be due immediately upon the expiration of such 365 day period); provided, that in the case of any legally binding commitment to reinvest such Net Cash Proceeds within 365 days of receipt thereof, such 365 day period shall be extended by an additional 180 days.

(iii) Debt Issuance. Immediately upon receipt by the Company or any Restricted Subsidiary of the Net Cash Proceeds of (x) any Debt Issuance or (y) any Refinancing Notes, any Specified Refinancing Term Loans or any Refinancing Junior Loans, the Borrowers shall prepay the Term Loans (in the case of clause (y), only the Term Loans being refinanced or replaced) in an aggregate amount equal to 100% of such Net Cash Proceeds.

(iv) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.05(b) shall be applied as follows: (A) with respect to all

amounts prepaid pursuant to Section 2.05(b)(i)(A), first, ratably to the L/C Borrowings and the Swing Line Loans, second, to the outstanding Revolving A Loans, and, third, to Cash Collateralize the remaining L/C Obligations; (B) with respect to all amounts prepaid pursuant to Section 2.05(b)(i)(B), to the outstanding Revolving B Loans; and (C) with respect to all amounts prepaid pursuant to Section 2.05(b)(ii) or (iii), ratably to the Term Loans (in each case to the remaining principal amortization payments thereof as directed by the applicable Borrower); provided, that any Incremental Term Loan or Specified Refinancing Term Loan may participate in such mandatory prepayments pursuant to Section 2.05(b)(ii) and 2.05(b)(iii) on a pro rata or less than pro rata basis. Within the parameters of the applications set forth above, prepayments shall be applied first ratably to Base Rate Loans and Canadian Prime Rate Loans, then to Alternative Currency Daily Rate Loans, then ~~ratably to LIBOR Rate Loans and to~~ Term SOFR Loans, and lastly to Alternative Currency Term Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

(c) Repatriation Considerations. Notwithstanding any other provisions of Section 2.05(b)(ii), (i) to the extent that (and for so long as) any of or all the net proceeds of any event giving rise to a mandatory prepayment pursuant to Section 2.05(b)(ii) is prohibited or restricted by applicable local Law from being repatriated to the jurisdiction of organization of the Company, taking into account matters such as financial assistance, corporate benefit restrictions and the fiduciary and statutory duties of the directors of the Company and its Subsidiaries, an amount equal to the portion of such net proceeds so affected will not be required to be applied to repay Loans at the times provided in Section 2.05(b)(iv) but may be retained by the applicable Restricted Subsidiary so long as the applicable local Law will not permit such repatriation to the Company (the Company hereby agreeing to cause the applicable Restricted Subsidiary to promptly take commercially reasonable actions available under applicable local Law to permit such repatriation or a part thereof if full repatriation is not permitted) or such conflict or risk exists, and if such repatriation of any such affected net proceeds is permitted under the applicable local Law and such conflict or risk no longer exists, an amount equal to such net proceeds not previously paid will be promptly applied to the Loans pursuant Section 2.05(b)(ii) and (ii) to the extent that the Company has determined in good faith (in consultation with the Administrative Agent) that repatriation of any of or all of the net proceeds of any event giving rise to a prepayment pursuant to Sections 2.05(b)(ii) to the jurisdiction of organization of the Company would have a material adverse tax consequence with respect to such net proceeds (taking into account any foreign tax credit or benefit that would be realized in connection with such repatriation), the net proceeds so affected will not be required to be applied to repay the Loans at the times provided in Section 2.05(b) but may be retained by the applicable Restricted Subsidiary until such time as it may repatriate such amount without incurring such material adverse tax consequences (at which time such amount shall be repatriated to the Company and applied to repay the Loans to the extent provided herein).

(d) Declined Amount. Other than with respect to repayments pursuant to Section 2.05(b)(iii)(y), the applicable Lenders may elect not to accept any mandatory prepayment (each such Lender, a “Declining Lender”). Any prepayment amount declined by the Declining Lenders (the “Declined Amount”) shall be retained by the Company.

## **2.06 Termination or Reduction of Commitments.**

(a) Revolving Commitments. The Company may, upon notice to the Administrative Agent, (i) terminate the Aggregate Revolving A Commitments and/or the Aggregate Revolving B Commitments, (ii) from time to time permanently reduce the Letter of Credit Sublimit, the Swing Line Sublimit and/or the Foreign Borrower Sublimit, (iii) from time to time permanently reduce the Aggregate Revolving A Commitments to an amount not less than the Outstanding Amount of Revolving A Loans, Swing Line Loans and L/C Obligations or (iv) from time to time permanently reduce the Aggregate Revolving B Commitments to an amount not less than the Outstanding Amount of Revolving B Loans; provided that (A) any such notice shall be received

by the Administrative Agent not later than 12:00 noon three (3) Business Days prior to the date of termination or reduction, (B) any such partial reduction shall be in an aggregate amount of \$2,000,000 or any whole multiple of \$1,000,000 in excess thereof, (C) the Company shall not terminate or reduce (x) (1) the Aggregate Revolving A Commitments and/or Aggregate Revolving B Commitments, as applicable, if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving A Outstandings and/or Total Revolving B Outstandings, as applicable, would exceed the Aggregate Revolving A Commitments and/or Aggregate Revolving B Commitments, as applicable, (2) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, (3) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit or (4) the Foreign Borrower Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Loans and L/C Obligations made to Foreign Borrowers would exceed the Foreign Borrower Sublimit and (D) any such notice may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice of termination or reduction may be revoked by the applicable Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) Term A-3 Loan Commitments. The Company may, upon notice to the Administrative Agent, terminate or permanently reduce the Term A-3 Loan Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 12:00 noon three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$2,000,000 or any whole multiple of \$1,000,000 in excess thereof, and (iii) any such notice may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice of termination or reduction may be revoked by the applicable Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. The aggregate Term A-3 Loan Commitments shall be automatically and permanently reduced (A) upon the issuance by the Company or any of its Restricted Subsidiaries of senior notes as a registered, Rule 144A, or other private placement offering during the Term A-3 Loan Availability Period, on a dollar-for-dollar basis based on the principal amount of such notes, and (B) to zero on the earlier of (1) the Borrowing of the Term A-3 Loan pursuant to Section 2.01(e) and (2) the last day of the Term A-3 Loan Availability Period.

(c) Notice. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, the Swing Line Sublimit, the Aggregate Revolving A Commitments, the Aggregate Revolving B Commitments, or the Term A-3 Loan Commitments under this Section 2.06. Upon any reduction of the Aggregate Revolving A Commitments, the Revolving A Commitment of each Revolving A Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. Upon any reduction of the Aggregate Revolving B Commitments, the Revolving B Commitment of each Revolving B Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. Upon any reduction of the Term A-3 Loan Commitments, the Term A-3 Loan Commitment of each Term A-3 Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees in respect of the Aggregate Revolving A Commitments, Aggregate Revolving B Commitments, and/or the Term A-3 Loan Commitments, as applicable, accrued until the effective date of any termination of the Aggregate Revolving A Commitments, Aggregate Revolving B Commitments, and/or the Term A-3 Loan Commitments, as applicable, shall be paid on the effective date of such termination.

## **2.07 Repayment of Loans.**

(a) Revolving Loans. The Borrowers shall repay to the Revolving Lenders on the Maturity Date the aggregate principal amount of all Revolving Loans outstanding on such date.

(b) **Swing Line Loans.** The Company shall repay each Swing Line Loan on the earlier to occur of (i) the date within ten (10) Business Days of demand therefor by the Swing Line Lender and (ii) the Maturity Date.

(c) **Initial Term Loan.** The Company shall repay the outstanding principal amount of the Initial Term Loan in installments on the dates and in the amounts equal to the percentages set forth in the table below of the outstanding principal amount of the Initial Term Loan on the Second Amendment Effective Date (as such installments may hereafter be adjusted as a result of prepayments of the Initial Term Loan made pursuant to Section 2.05), unless accelerated sooner pursuant to Section 8.01:

Payment Dates	Principal Amortization Payment (% of Outstanding Amount of Initial Term Loan on the Second Amendment Effective Date)
September 30, 2021	0.000%
December 31, 2021	0.000%
March 31, 2022	0.000%
June 30, 2022	0.000%
September 30, 2022	0.000%
December 31, 2022	1.250%
March 31, 2023	1.250%
June 30, 2023	1.250%
September 30, 2023	1.250%
December 31, 2023	1.250%
March 31, 2024	1.250%
June 30, 2024	1.250%
September 30, 2024	1.250%
December 31, 2024	1.875%
March 31, 2025	1.875%
June 30, 2025	1.875%
September 30, 2025	1.875%
December 31, 2025	2.500%
March 31, 2026	2.500%
June 30, 2026	2.500%
Maturity Date	Outstanding Principal Balance of the Initial Term Loan

**Article XV** If any date set for payment is not a Business Day, the payment to be made on such payment date shall be made on the immediately prior Business Day.

(d) **Initial Term A-2 Loan.** The Canadian Borrower shall repay the outstanding principal amount of the Initial Term A-2 Loan in installments on the dates and in the amounts equal to the percentages set forth in the table below of the outstanding principal amount of the Initial Term A-2 Loan on the Second Amendment Effective Date (as such installments may hereafter be adjusted as a result of prepayments of the Initial Term A-2 Loan made pursuant to Section 2.05), unless accelerated sooner pursuant to Section 8.01:

Payment Dates	Principal Amortization Payment (% of Outstanding Amount of Initial Term A-2 Loan on the Second Amendment Effective Date)
September 30, 2021	0.000%
December 31, 2021	0.000%
March 31, 2022	0.000%
June 30, 2022	0.000%
September 30, 2022	0.000%
December 31, 2022	1.250%
March 31, 2023	1.250%
June 30, 2023	1.250%
September 30, 2023	1.250%
December 31, 2023	1.250%
March 31, 2024	1.250%
June 30, 2024	1.250%
September 30, 2024	1.250%
December 31, 2024	1.875%
March 31, 2025	1.875%
June 30, 2025	1.875%
September 30, 2025	1.875%
December 31, 2025	2.500%
March 31, 2026	2.500%
June 30, 2026	2.500%
Maturity Date	Outstanding Principal Balance of the Initial Term A-2 Loan

**Article XVI** If any date set for payment is not a Business Day, the payment to be made on such payment date shall be made on the immediately prior Business Day.

(e) Term A-3 Loan. The Company shall repay the outstanding principal amount of the Term A-3 Loan in installments on the dates and in the amounts equal to the percentages set forth in the table below of the outstanding principal amount of the Term A-3 Loan on the date of the Borrowing of the Term A-3 Loan (as such installments may hereafter be adjusted as a result of prepayments of the Term A-3 Loan made pursuant to Section 2.05), unless accelerated sooner pursuant to Section 8.01:

Payment Dates	Principal Amortization Payment (% of Outstanding Amount of Term A-3 Loan on the Date of Borrowing of Term A-3 Loan)
September 30, 2022	0.000%
December 31, 2022	0.000%
March 31, 2023	0.000%
June 30, 2023	1.250%
September 30, 2023	1.250%
December 31, 2023	1.250%
March 31, 2024	1.250%
June 30, 2024	1.250%
September 30, 2024	1.250%
December 31, 2024	1.875%
March 31, 2025	1.875%
June 30, 2025	1.875%
September 30, 2025	1.875%
December 31, 2025	2.500%
March 31, 2026	2.500%
June 30, 2026	2.500%
Maturity Date	Outstanding Principal Balance of the Term A-3 Loan

**Article XVII** If any date set for payment is not a Business Day, the payment to be made on such payment date shall be made on the immediately prior Business Day.

(f) Incremental Term Loans. The Borrowers shall repay the outstanding principal amount of all Incremental Term Loans in the installments, on the dates and in the amounts set forth in the applicable Incremental Term Loan Lender Joinder Agreement for such Incremental Term Loan (as such installments may hereafter be adjusted as a result of the application of prepayments of Incremental Term Loans in accordance with the order of priority set forth in Section 2.05), unless accelerated sooner pursuant to Section 8.01.

## 2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) ~~each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the LIBOR Rate for such Interest Period plus the Applicable Rate;~~ (ii) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Rate; (iii) each Base Rate Loan (other than a Swing Line Loan) shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; (iv) each Alternative Currency Daily Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternative Currency Daily Rate plus the Applicable Rate; (v) each Alternative Currency Term Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Alternative Currency Term Rate for such Interest Period plus the Applicable Rate; (vi) each Canadian Prime Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Canadian Prime Rate plus the Applicable Rate; and (vii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the sum of the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) For the purposes of the Interest Act (Canada), (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "deemed year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields. Each Credit Party hereby irrevocably agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to this Agreement and the other Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to it, whether pursuant to section 4 of the Interest Act (Canada) or any other applicable law or legal principle.

## **2.09 Fees.**

In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Company shall pay to the Administrative Agent, for the account of each Revolving Lender in accordance with its Applicable Percentage, a commitment fee (the "Commitment Fee") at a rate per annum equal to:

(i) the product of (A) the Applicable Rate times (B) the actual daily amount by which the Aggregate Revolving A Commitments exceed the sum of (y) the Outstanding Amount of Revolving A Loans and (z) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15; and

(ii) the product of (A) the Applicable Rate times (B) the actual daily amount by which the Aggregate Revolving B Commitments exceed the Outstanding Amount of Revolving B Loans, subject to adjustment as provided in Section 2.15

**Article XVIII** The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date. The Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. For purposes of

clarification, Swing Line Loans shall not be considered outstanding for purposes of determining the unused portion of the Aggregate Revolving A Commitments and/or the Aggregate Revolving B Commitments, as applicable.

(b) Term A-3 Loan Ticking Fee. The Company shall pay to the Administrative Agent, for the account of each Term A-3 Lender in accordance with its Applicable Percentage with respect to the Term A-3 Loan, a ticking fee (the “Term A-3 Loan Ticking Fee”) at a rate per annum equal to the product of (i) the Applicable Rate times (ii) the actual daily amount by which the Term A-3 Loan Commitments exceed the Outstanding Amount of the Term A-3 Loan, subject to adjustment as provided in Section 2.15. The Term A-3 Loan Ticking Fee shall accrue at all times during the Term A-3 Loan Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Third Amendment Effective Date and on the date the Term A-3 Loan Availability Period expires. The Term A-3 Loan Ticking Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(c) Other Fees. The Company shall pay (i) to the Arrangers and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times specified in the Fee Letter, and (ii) to the Lenders, in Dollars, such fees, if any, as shall have been separately agreed upon in writing in the amounts and at the times so specified. All such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

## **2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.**

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to ~~the LIBOR Rate or~~ Term SOFR) and Loans denominated in Canadian Dollars shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Loans denominated in Alternative Currencies if market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Company or for any other reason, the Company or the Lenders determine that (i) the Consolidated Total Net Leverage Ratio as calculated by the Company as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Total Net Leverage Ratio would have resulted in higher pricing for such period, the Company shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the Bankruptcy Code of the United States or other applicable Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent or any Lender, as the case may be, under Article VIII. The Company’s obligations under this paragraph shall survive the termination of all commitments and the repayment of all Obligations hereunder.

## **2.11 Evidence of Debt.**

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligations of the Borrowers hereunder to pay any amount owing with respect to their respective Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to a Borrower made through the Administrative Agent, such Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note, which shall evidence such Lender's Loans to such Borrower in addition to such accounts or records. Each such promissory note shall (i) in the case of Revolving Loans, be in the form of (x) Exhibit B-1 with respect to the Company or any other Borrower that is a Domestic Subsidiary and (y) Exhibit B-2 with respect to any Borrower that is a Foreign Borrower (each a "Revolving Note"), (ii) in the case of the Initial Term Loan, be in the form of Exhibit B-3 (an "Initial Term Note"), (iii) in the case of the Initial Term Loan, be in the form of Exhibit B-6 (an "Initial Term A-2 Note"), (iv) in the case of any Incremental Term Loan, be in the form of Exhibit B-4 (an "Incremental Term Note"), (v) in the case of Swing Line Loans, be in the form of Exhibit B-5 (a "Swing Line Note") and (vi) in the case of the Term A-3 Loan, be in the form of Exhibit B-7 (a "Term A-3 Note"). Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans, as applicable. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.12 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrowers shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time on the dates specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Except as may otherwise be provided in the definition of "Interest Period" or Section 2.07, if any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of ~~LIBOR Rate Loans~~, Term SOFR Loans, or Alternative Currency Loans (or, in the case of any Borrowing of Base Rate Loans or Canadian Prime Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans or Canadian Prime Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to (x) Base Rate Loans, in the case of Loans denominated in Dollars, (y) Canadian Prime Rate Loans, in the case of Loans denominated in Canadian Dollars, or (z) in the case of Loans denominated in Alternative Currencies (other than Canadian Dollars), in accordance with such market practice, in each case, as applicable. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by such Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders or the L/C Issuer, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"):

(A) no Borrower has in fact made such payment,

(B) the Administrative Agent has made a payment in excess of the amount so paid by the applicable Borrower (whether or not then owed) or

(C) the Administrative Agent has for any reason otherwise erroneously made such payment;

then each of the applicable Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate per annum equal to the Overnight Rate; provided, that, this Section 2.12(b)(ii) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such payment not been made by the Administrative Agent.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to any Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to such Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.13 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal or of interest on any of the Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of a Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.14 or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Company or any Restricted Subsidiary thereof (as to which the provisions of this Section shall apply).

Each 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 such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

#### **2.14 Cash Collateral.**

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Company shall be required to provide Cash Collateral pursuant to

Section 8.01 or (iv) there shall exist a Defaulting Lender, the Company shall immediately (in the case of clause (iii) above) or within one Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.15(b) and any Cash Collateral provided by the Defaulting Lender). Additionally, if the Administrative Agent notifies the Company at any time that the Outstanding Amount of all L/C Obligations at such time exceeds 105% of the Letter of Credit Sublimit then in effect, then, within two Business Days after receipt of such notice, the Company shall provide Cash Collateral for the Outstanding Amount of the L/C Obligations in an amount not less than the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit.

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, interest bearing deposit accounts at the Administrative Agent. The Company, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Company, or the relevant Defaulting Lender, 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. The Company shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.01 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving A Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving A Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(v))) or (ii) the good faith determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## **2.15 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendment. The Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amount received by the Administrative Agent for the account of that 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 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to that Defaulting Lender in accordance with Section 2.14; fourth, as the Company may request (so long as no Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Company, to be held in a deposit account and released pro rata in order to (x) satisfy that Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to that Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default exists, to the payment of any amounts owing to the Company as a result of any judgment of a court of competent jurisdiction obtained by the Company against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that 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 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, that Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.15(b). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee payable under Section 2.09(a) or any Term A-3 Loan Ticking Fee payable under Section 2.09(b) for any period during which such Lender is a Defaulting Lender (and the Company shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of

Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Company shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (b) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(b) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders that are Revolving A Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Company shall have otherwise notified the Administrative Agent at such time, the Administrative Agent and the Lenders may assume that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate principal amount at such time of any Non-Defaulting Lender's outstanding Revolving A Loans and such Lender's participation in L/C Obligations and Swing Line Loans at such time to exceed such Non-Defaulting Lender's Revolving A Commitment. Subject to Section 10.20, 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.

(c) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (b) above cannot, or can only partially, be effected, the Company shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(d) Defaulting Lender Cure. If the Company, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be 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 Revolving A Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(b)), whereupon that 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 Company while that Lender was a Defaulting Lender; provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

## **2.16 Designated Borrowers.**

(a) The Company may at any time, upon not less than ten (10) Business Days' notice from the Company to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), designate any additional wholly-owned Restricted

Subsidiary (an “Applicant Borrower”) as a Borrower to receive Revolving A Loans, Revolving B Loans and/or Incremental Term Loans hereunder by delivering to the Administrative Agent (which shall promptly (and in any event, within two (2) Business Days) deliver counterparts thereof to each applicable Lender) a duly executed notice and agreement in substantially the form of Exhibit F (a “Borrower Request and Assumption Agreement”). The parties hereto acknowledge and agree that prior to any Applicant Borrower becoming entitled to utilize the Revolving A Commitments, Revolving B Commitments or borrow Incremental Term Loans as provided for herein, the Administrative Agent and the Revolving A Lenders, the Revolving B Lenders or the Incremental Term Lenders, as applicable, shall have received such supporting resolutions, incumbency certificates, opinions of counsel and other documents or information, in form, content and scope reasonably satisfactory to the Administrative Agent, as may be required by the Administrative Agent in its reasonable discretion, and Notes signed by such new Borrowers to the extent any Revolving A Lenders, Revolving B Lenders or Incremental Term Lenders, as applicable, so request. If the Administrative Agent and the Revolving A Lenders, Revolving B Lenders and/or Incremental Term Lenders, as applicable, each agree that an Applicant Borrower shall be entitled to receive Revolving A Loans, Revolving B Loans and/or Incremental Term Loans, as applicable, then promptly following receipt of (x) all documentation and other information required by bank regulatory authorities under the applicable “know your customer” and anti-money laundering rules and regulations, including the Act, (y) if such Applicant Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, to the extent requested by a Lender, a Beneficial Ownership Certification in relation to such Applicant Borrower and (z) all such requested resolutions, incumbency certificates, opinions of counsel and other documents or information, the Administrative Agent shall send a notice in substantially the form of Exhibit G (a “Borrower Notice”) to the Company and the applicable Lenders specifying the effective date upon which the Applicant Borrower shall constitute a Borrower for purposes hereof, whereupon each of the Revolving A Lenders, Revolving B Lenders and/or Incremental Term Lenders, as applicable, agrees to permit such Borrower to receive Revolving A Loans, Revolving B Loans and/or Incremental Term Loans hereunder, on the terms and conditions set forth herein, and each of the parties hereto agrees that such Borrower otherwise shall be a Borrower for all purposes of this Agreement; provided that no Loan Notice or Letter of Credit Application may be submitted by or on behalf of such Borrower until the date five (5) Business Days after such effective date. Any failure by a Revolving A Lender, Revolving B Lender and/or Incremental Term Lender, as applicable, to respond to a Borrower Request and Assumption Agreement for an Applicant Borrower shall be deemed to be a refusal by such Revolving A Lender, Revolving B Lender and/or Incremental Term Lender, as applicable, to the addition of such Applicant Borrower.

(b) The Obligations of the Company and each Domestic Borrower shall be joint and several in nature regardless of which such Person actually receives Credit Extensions hereunder or the amount of such Credit Extensions received or the manner in which the Administrative Agent or any Lender accounts for such Credit Extensions on its books and records. Each of the obligations of the Company and each Domestic Borrower with respect to Credit Extensions made to it, and each such Borrower’s obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Credit Extensions made to and other Obligations owing by the Company and the other Domestic Borrowers hereunder, shall be separate and distinct obligations, but all such obligations shall be primary obligations of each such Borrower. The provisions of Section 11.02 and 11.04 are incorporated herein by reference and shall apply to the obligations of the Company and the Domestic Borrowers under this Section 2.16(b) *mutatis mutandis*.

(c) Each Foreign Borrower shall be jointly and severally liable with the other Foreign Borrowers for all Obligations of the Foreign Borrowers, regardless of which Foreign Borrower actually receives Credit Extensions or the amount of such Credit Extensions received or the manner in which the Administrative Agent or any Lender accounts for such Credit Extensions on its books and records. Each Foreign Borrower’s obligations with respect to Credit Extensions made to it, and each Foreign Borrower’s obligations arising as a result of the joint and several liability of such Foreign Borrower with the other Foreign Borrowers with respect to Credit Extensions made to, and other Obligations owing by, the other Foreign Borrowers, shall be

separate and distinct obligations, but all such obligations shall be primary obligations of each such Foreign Borrower. Notwithstanding anything to the contrary, any amount paid by or collected from a Foreign Borrower under this Agreement or any other Loan Document shall not, in any event, be allocated to the payment of any obligations hereunder (or any other Loan Document) of any Domestic Credit Party. The provisions of Section 11.02 and 11.04 are incorporated herein by reference and shall apply to the obligations of the Foreign Borrowers under this Section 2.16(c) *mutatis mutandis*.

(d) Each Restricted Subsidiary that is or becomes a “Borrower” pursuant to this Section 2.16 hereby irrevocably appoints the Company as its agent for all purposes relevant to this Agreement and each of the other Loan Documents, including (i) the giving and receipt of notices, (ii) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (iii) the receipt of the proceeds of any Loans made by the Lenders, to any such Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by each Borrower acting singly, shall be valid and effective if given or taken only by the Company, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered to the Company in accordance with the terms of this Agreement shall be deemed to have been delivered to each Designated Borrower.

(e) The Company may from time to time, upon not less than ten (10) Business Days’ notice from the Company to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), terminate a Designated Borrower’s status as such status as a Borrower; provided that there are no outstanding Loans payable by such Designated Borrower or other amounts payable by such Designated Borrower on account of any Loans made to it, as of the effective date of such termination. The Administrative Agent will promptly notify the Lenders of any such termination of a Designated Borrower’s status.

## **2.17 Refinancing Facilities.**

(a) The Borrowers may from time to time, add one or more new term loan facilities to the credit facilities under this Agreement (“Specified Refinancing Term Loans”) pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrowers, to refinance all or any portion of any Term Loans then outstanding under this Agreement; provided that such Specified Refinancing Term Loans: (i) will rank pari passu in right of payment as the other Loans and Commitments hereunder; (ii) will not have obligors or contingent obligors that were not obligors or contingent obligors in respect of the Obligations; (iii) will be (x) unsecured or (y) secured by the Collateral on a pari passu or junior basis with the Obligations pursuant to a Market Intercreditor Agreement that is reasonably satisfactory to the Administrative Agent and the Company; (iv) will have a maturity date that is not prior to the Latest Maturity Date of, and will have a weighted average life to maturity that is not shorter than the weighted average life to maturity of, the Term Loans being refinanced; (v) any Specified Refinancing Term Loan shall share ratably in any prepayments of Term Loans pursuant to Section 2.05(b) (or otherwise provide for more favorable prepayment treatment for the then outstanding Term Loans other than the Specified Refinancing Term Loans); (vi) subject to clause (v) above, shall have terms and conditions that are the same as the Term Loan(s) being refinanced or, if not consistent with the terms of the Term Loan(s) being refinanced, shall be reasonably satisfactory to the Administrative Agent (it being agreed that the following shall be reasonably satisfactory to the Administrative Agent: (A) covenants or other provisions applicable only to periods after the Latest Maturity Date of the Loans existing at the time of such refinancing or that are added for the benefit of the Administrative Agent and the Lenders under the then-existing Loans and (B) to the extent required by the lenders providing the Specified Refinancing Term Loan, customary “most-favored-nation” protection, call protection, and an excess cash flow prepayment, in each case, which may be applicable solely with respect to such Specified Refinancing Term Loans; provided, that, to the extent an excess cash flow prepayment is required in connection with the establishment of a Specified Refinancing Term Loan, such excess cash flow mandatory prepayment shall be applied ratably to all then-existing Term Loans); (vii) no

Event of Default shall have occurred and be continuing at the time such Specified Refinancing Term Loans are incurred; and (viii) the Net Cash Proceeds of such Specified Refinancing Term Loans shall be applied, substantially concurrently with the incurrence thereof, to the pro rata prepayment of outstanding Loans being so refinanced, in each case pursuant to Section 2.05 and 2.07, as applicable; provided, however, that such Specified Refinancing Term Loans; (A) shall not have a principal or commitment amount (or accreted value) greater than the Loans being refinanced (excluding accrued interest, fees (including original issue discount and upfront fees), discounts, premiums or expenses) and (B) may provide for any additional or different financial or other covenants or other provisions that are agreed among the Company and the lenders thereof and applicable only during periods after the Latest Maturity Date of any of the Loans that remain outstanding after giving effect to such Specified Refinancing Term Loans or the date on which all non-refinanced Obligations are paid in full.

(b) The Company shall make any request for Specified Refinancing Term Loans pursuant to a written notice to the Administrative Agent specifying in reasonable detail the proposed terms thereof. Any proposed Specified Refinancing Term Loans may be provided by existing Lenders (it being understood that existing Lenders are not required to provide such proposed Specified Refinancing Term Loans) or, subject to the approval of the Administrative Agent, Eligible Assignees in such respective amounts as the Company may elect.

(c) The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in clause (a) above and Section 4.02, and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of legal opinions, board resolutions, officers' certificates and/or reaffirmation agreements, including any supplements or amendments to the Collateral Documents providing for such Specified Refinancing Term Loans to be secured thereby, generally consistent, where applicable, with those delivered on the Closing Date under Section 4.01 (other than changes to such legal opinions resulting from a Change in Law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent). The Lenders hereby authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrowers as may be necessary in order to establish any Specified Refinancing Term Loan and to make such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Company in connection with the establishment of such Specified Refinancing Term Loans, in each case on terms consistent with and/or to effect the provisions of this Section 2.17.

(d) Each class of Specified Refinancing Term Loans incurred under this Section 2.17 shall be in an aggregate principal amount that is (i) (x) with respect to Specified Refinancing Term Loans denominated in Dollars, not less than \$5,000,000, or \$1,000,000 increments in excess thereof or (y) with respect to Specified Refinancing Term Loans denominated in an Alternative Currency, not less than an amount in such Alternative Currency equal to the Dollar Equivalent of \$5,000,000, and \$1,000,000 increments in excess thereof or (ii) the amount required to refinance all of the applicable class of Loans and/or Commitments.

(e) The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Specified Refinancing Term Loans incurred pursuant thereto (including the addition of such Specified Refinancing Term Loans as separate facilities hereunder and treated in a manner consistent with the credit facilities under this Agreement being refinanced, including for purposes of prepayments and voting). Any Refinancing Amendment may, without the consent of any Person other than the Borrowers, the Administrative Agent and the Lenders providing such Specified Refinancing Term Loans, 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 Company to effect the provisions of or be consistent with this Section 2.17.

## **2.18 Incremental Facilities**

**Article XIX** The Borrowers may at any time and from time to time following the Second Amendment Effective Date, upon prior written notice by the applicable Borrower to the Administrative Agent, increase the Aggregate Revolving A Commitments (but not the Letter of Credit Sublimit, the Swing Line Sublimit or the Foreign Borrower Sublimit (except as otherwise set forth in the definition therein)) and/or the Aggregate Revolving B Commitments and/or establish one or more Incremental Term Loans, by a maximum aggregate amount not to exceed the Incremental Amount, as follows (in each case, subject to Section 1.02(d)):

(a) The Borrowers may at any time and from time to time, upon prior written notice by the applicable Borrower to the Administrative Agent, increase the Aggregate Revolving A Commitments (but not the Letter of Credit Sublimit, the Swing Line Sublimit or the Foreign Borrower Sublimit (except as otherwise set forth in the definition therein)) with additional Revolving A Commitments from any existing Revolving A Lender or new Revolving A Commitments from any other Person selected by the Company and reasonably acceptable to the Administrative Agent, the L/C Issuer and the Swing Line Lender; provided that:

(i) any such increase shall be in a minimum principal amount of \$10,000,000 and in integral multiples of \$1,000,000 in excess thereof;

(ii) no Event of Default shall exist and be continuing at the time of any such increase;

(iii) no existing Revolving A Lender shall be under any obligation to increase its Revolving A Commitment and any such decision whether to increase its Revolving A Commitment shall be in such Revolving A Lender's sole and absolute discretion;

(iv) (1) any new Revolving A Lender shall join this Agreement by executing such joinder documents required by the Administrative Agent and/or (2) any existing Revolving A Lender electing to increase its Revolving A Commitment shall have executed a commitment agreement reasonably satisfactory to the Administrative Agent;

(v) as a condition precedent to such increase, (1) the applicable Borrower shall deliver to the Administrative Agent (x) a certificate of each Credit Party that has guaranteed the Obligations of such Borrower dated as of the date of such increase signed by an Authorized Officer of such Credit Party certifying and attaching the resolutions adopted by such Credit Party approving or consenting to such increase and (y) a certificate of the Company signed by an Authorized Officer of the Company certifying that, (A) before and after giving effect to such increase, (I) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) on and as of the date of such increase, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) as of such earlier date and (II) no Event of Default exists and (B) immediately after giving pro forma effect to the increase of the Aggregate Revolving A Commitments (assuming for such calculation that such increase is fully drawn), the Company would be in compliance with the financial covenants set forth in Section 7.08 and 7.09 recomputed as of the end of the period of twelve months most recently ended for which the Company has delivered financial statements pursuant to Section 6.01(a) or (b); (2) the Company shall deliver to the Administrative Agent customary opinions of legal counsel to the Credit Parties, addressed to the Administrative Agent and each Lender, dated as of the effect date of such increase; and (3) the Company shall deliver to the Administrative Agent such amendments to the Collateral Documents as the Administrative Agent may deem necessary in connection with such increase; and

(vi) Schedule 2.01 shall be deemed revised to include any increase in the Aggregate Revolving A Commitments pursuant to this Section 2.18(a) and to include thereon any Person that becomes a Lender pursuant to this Section 2.18(a).

**Article XX** The Borrowers shall prepay any Revolving A Loans owing by them and outstanding on the date of any such increase (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving A Loans ratable with any revised Revolving A Commitments arising from any non-ratable increase in the Revolving A Commitments under this Section.

(b) The Borrowers may at any time and from time to time, upon prior written notice by the applicable Borrower to the Administrative Agent, increase the Aggregate Revolving B Commitments with additional Revolving B Commitments from any existing Revolving B Lender or new Revolving B Commitments from any other Person selected by the Company and acceptable to the Administrative Agent, the L/C Issuer and the Swing Line Lender; provided that:

(i) any such increase shall be in a minimum principal amount of \$10,000,000 and in integral multiples of \$1,000,000 in excess thereof;

(ii) no Event of Default shall exist and be continuing at the time of any such increase;

(iii) no existing Revolving B Lender shall be under any obligation to increase its Revolving B Commitment and any such decision whether to increase its Revolving B Commitment shall be in such Revolving B Lender's sole and absolute discretion;

(iv) (1) any new Revolving B Lender shall join this Agreement by executing such joinder documents required by the Administrative Agent and/or (2) any existing Revolving B Lender electing to increase its Revolving B Commitment shall have executed a commitment agreement reasonably satisfactory to the Administrative Agent;

(v) as a condition precedent to such increase, (1) the applicable Borrower shall deliver to the Administrative Agent (x) a certificate of each Credit Party that has guaranteed the Obligations of such Borrower dated as of the date of such increase signed by an Authorized Officer of such Credit Party certifying and attaching the resolutions adopted by such Credit Party approving or consenting to such increase and (y) a certificate of the Company signed by an Authorized Officer of the Company certifying that, (A) before and after giving effect to such increase, (I) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) on and as of the date of such increase, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) as of such earlier date and (II) no Event of Default exists and (B) immediately after giving pro forma effect to the increase of the Aggregate Revolving B Commitments (assuming for such calculation that such increase is fully drawn), the Company would be in compliance with the financial covenants set forth in Section 7.08 and 7.09 recomputed as of the end of the period of twelve months most recently ended for which the Company has delivered financial statements pursuant to Section 6.01(a) or (b); (2) the Company shall deliver to the Administrative Agent customary opinions of legal counsel to the Credit Parties, addressed to the Administrative Agent and each Lender, dated as of the effect date of such increase; and (3) the Company shall deliver to the Administrative Agent such amendments to the Collateral Documents as the Administrative Agent may deem necessary in connection with such increase; and

(vi) Schedule 2.01 shall be deemed revised to include any increase in the Aggregate Revolving B Commitments pursuant to this Section 2.18(a) and to include thereon any Person that becomes a Lender pursuant to this Section 2.18(a).

**Article XXI** The Borrowers shall prepay any Revolving B Loans owing by them and outstanding on the date of any such increase (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving B Loans ratable with any revised Revolving B Commitments arising from any non-ratable increase in the Revolving B Commitments under this Section.

(c) The Borrowers may at any time and from time to time, upon prior written notice by the applicable Borrower to the Administrative Agent, institute an Incremental Term Loan; provided that:

(i) the applicable Borrower (in consultation and coordination with the Administrative Agent) shall obtain commitments for the amount of such Incremental Term Loan from existing Lenders or other Persons reasonably acceptable to the Administrative Agent (such consent not to be unreasonably withheld), which Lenders shall join this Agreement as Incremental Term Lenders by executing an Incremental Term Loan Lender Joinder Agreement;

(ii) any such Incremental Term Loan shall be in a minimum principal amount of \$10,000,000 and in integral multiples of \$1,000,000 in excess thereof;

(iii) subject to Section 1.02(d), no Event of Default shall exist and be continuing at the time of any such institution;

(iv) no existing Lender shall be under any obligation to become an Incremental Term Lender and any such decision whether to become an Incremental Term Lender shall be in such Lender's sole and absolute discretion;

(v) the Incremental Term Loan Maturity Date for such Incremental Term Loan shall be as set forth in the Incremental Term Loan Lender Joinder Agreement relating to such Incremental Term Loan; provided, that such date shall not be earlier than the Latest Maturity Date;

(vi) the scheduled principal amortization payments under such Incremental Term Loan shall be as set forth in the Incremental Term Loan Lender Joinder Agreement relating to such Incremental Term Loan; provided, that the weighted average life to maturity of such Incremental Term Loan shall not be shorter than the then-remaining weighted average life to maturity of the Initial Term Loan or the Initial Term A-2 Loan;

(vii) the currency of such Incremental Term Loan shall be as set forth in the Incremental Term Loan Lender Joinder Agreement;

(viii) each Incremental Term Loan shall rank pari passu in right of payment and security with the Obligations and shall be secured only by the Collateral and shall be guaranteed only by the Guarantors;

(ix) other than as set forth in clauses (v), (vi) and (vii) above, such Incremental Term Loan shall have terms and conditions that are the same as the then-existing Term Loan(s) or, if not consistent with the terms of the then-existing Term Loan(s), shall be reasonably satisfactory to the Administrative Agent (it being agreed that the following shall be reasonably satisfactory to the Administrative Agent: (A) covenants or other provisions applicable only to periods after the Latest Maturity Date of the then-existing Term Loans or that are added for the benefit of the Administrative Agent and the Lenders under the then-existing Term Loans and (B) to the extent required by the lenders providing the Incremental Term Loan, customary "most-favored-nation" protection, call protection, and an excess cash flow prepayment, in each case, which may be applicable solely with respect to such Incremental Term Loans; provided, that, to the extent an excess cash flow prepayment is required in connection with the establishment of an Incremental Term Loan, such excess cash flow mandatory prepayment shall be applied ratably to all then-existing Term Loans);

(x) as a condition precedent to such institution, (1) the applicable Borrower shall deliver to the Administrative Agent (x) a certificate of each Credit Party that has guaranteed the Obligations of such Borrower dated as of the date of such institution signed by an Authorized Officer of such Credit Party certifying and attaching the resolutions adopted by such Credit Party approving or consenting to such institution, and (y) a certificate of the Company signed by an Authorized Officer of the Company, certifying that, (A) before and after giving effect to such institution and subject to Section 1.02(d), (I) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the date of such increase, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date and (II) no Event of Default exists and (B) subject to Section 1.02(d), immediately after giving pro forma effect to the institution of the Incremental Term Loan, the Company would be in compliance with the financial covenants set forth in Section 7.08 and 7.09 recomputed as of the end of the period of twelve months most recently ended for which the Company has delivered financial statements pursuant to Section 6.01(a) or (b); (2) the Company shall deliver to the Administrative Agent customary opinions of legal counsel to the Credit Parties, addressed to the Administrative Agent and each Lender, dated as of the effect date of such institution; (3) the Company shall deliver to the Administrative Agent such amendments to the Collateral Documents as the Administrative Agent may deem necessary in connection with such institution;

(xi) such Incremental Term Loan shall share ratably in any prepayments of any existing Term Loan pursuant to Section 2.05 (or otherwise provide for more favorable prepayment treatment for any existing Term Loan, in each case, except with respect to the Term A-3 Loan) and shall have ratable voting rights as any existing Term Loan (or otherwise provide for more favorable voting rights for the existing Term Loans); and

(xii) Schedule 2.01 shall be deemed revised to reflect the commitments and commitment percentages of the Incremental Term Lenders as set forth in the Incremental Term Loan Lender Joinder Agreement.

## **2.19 Amend and Extend Transactions.**

(a) The Company may, by written notice to the Administrative Agent from time to time, request an extension (each, an “Extension”) of the Maturity Date of any Loans (and, as applicable, the Commitments relating thereto) to the extended maturity date specified in such notice. Such notice shall set forth (i) the amount of the Revolving Commitments and/or Term Loans to be extended (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$10,000,000), and (ii) the date on which such Extension is requested to become effective (which shall be not less than ten (10) Business Days nor more than sixty (60) days after the date of such Extension notice (or such longer or shorter periods as the Administrative Agent shall agree in its sole discretion)). Each Lender holding the relevant Commitments and/or Loans to be extended shall be offered (an “Extension Offer”) an opportunity to participate in such Extension on a pro rata basis and on the same terms and conditions as each other Lender pursuant to procedures established by, or reasonably acceptable to, the Administrative Agent. Any Lender approached to participate in such Extension may elect or decline, in its sole discretion, to participate in such Extension. If the aggregate principal amount of Revolving Commitments and/or Term Loans in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Revolving Commitments and/or Term Loans, as applicable, subject to the Extension Offer as set forth in the Extension notice, then the Revolving Commitments and/or Term Loans, as applicable, of the applicable Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts with respect to which such Lenders have accepted such Extension Offer.

(b) The following shall be conditions precedent to the effectiveness of any Extension: (i) no Event of Default shall have occurred and be continuing immediately prior to and

immediately after giving effect to such Extension, (ii) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) on and as of the effective date of such Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) as of such earlier date, (iii) the L/C Issuer and the Swing Line Lender shall have consented to any Extension of the Revolving A Commitments, in each case to the extent that such Extension provides for the issuance or extension of Letters of Credit or making of Swing Line Loans at any time during the extended period, and (iv) the terms of such Extended Revolving Commitments and Extended Term Loans shall comply with Section 2.19(c).

(c) The terms of each Extension shall be determined by the Company and the applicable extending Lenders and set forth in an Extension Amendment; provided that (i) the final maturity date of any Extended Revolving Commitment or Extended Term Loan shall be no earlier than the Latest Maturity Date for the Revolving Commitments so extended or the Term Loans so extended, as applicable, (ii) (A) there shall be no scheduled amortization of the loans or reductions of commitments under any Extended Revolving Commitments, and (B) the weighted average life to maturity of the Extended Term Loans shall be no shorter than the remaining weighted average life to maturity of the Term Loans so extended, (iii) the Extended Revolving Loans and the Extended Term Loans will rank *pari passu* in right of payment and with respect to security with the existing Revolving Loans and the existing Term Loans and the borrowers and guarantors of the Extended Revolving Commitments or Extended Term Loans, as applicable, shall be the same as the Borrowers and Guarantors with respect to the existing Revolving Loans and the existing Term Loans, as applicable, (iv) the interest rate margin, rate floors, fees, original issue discount and premium applicable to any Extended Revolving Commitment (and the Extended Revolving Loans thereunder) and Extended Term Loans shall be determined by the Company and the applicable extending Lenders, and (v) to the extent the terms of the Extended Revolving Commitments or Extended Term Loans are inconsistent with the terms set forth herein (except as set forth in clause (i) through (iv) above), such terms shall be reasonably satisfactory to the Administrative Agent.

(d) In connection with any Extension, the Company, the Administrative Agent and each applicable extending Lender shall execute and deliver to the Administrative Agent an Extension Amendment. The Lenders hereby authorize the Administrative Agent to enter into, and the Lenders agree that this Agreement and the other Loan Documents shall be amended by, any Extension Amendment entered into in connection with any Extension to the extent (and only to the extent) the Administrative Agent deems necessary in order to (i) reflect the existence and terms of such Extension, (ii) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of such Extension, and (iii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.19. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. The effectiveness of any Extension Amendment shall be subject to the receipt by the Administrative Agent of (A) to the extent requested by the Administrative Agent, customary opinions of legal counsel to the Credit Parties, addressed to the Administrative Agent and each Lender (including each Person providing any portion of such Extension) dated as of the effective date of such Extension, and (ii) such other documents and certificates it may reasonably request relating to the necessary authority for such Extension, and any other matters relevant thereto, all in form and substance reasonably satisfactory to the Administrative Agent.

## **2.20 ESG Adjustments.**

(a) After the Second Amendment Effective Date, the Company, in consultation with the Sustainability Coordinator, shall be entitled, in its sole discretion, to establish specified key performance indicators (“KPIs”) with respect to certain environmental, social and governance (“ESG”) targets of the Company and its Subsidiaries. The Sustainability Coordinator and the Company may amend this Agreement (such amendment, an “ESG Amendment”) solely for the

purpose of incorporating the KPIs and other related provisions (the “ESG Pricing Provisions”) into this Agreement, and any such amendment shall become effective at 5:00 p.m. on the tenth (10<sup>th</sup>) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent (who shall promptly notify the Company) written notice that such Required Lenders object to such ESG Amendment. In the event that Required Lenders deliver a written notice objecting to any such ESG Amendment, an alternative ESG Amendment may be effectuated with the consent of the Required Lenders, the Company and the Sustainability Coordinator. Upon the effectiveness of any such ESG Amendment, based on the Company’s performance against the KPIs, certain adjustments (increase, decrease or no adjustment) (such adjustments, the “ESG Applicable Rate Adjustments”) to the otherwise applicable Applicable Rate for ~~LIBOR Rate Loans~~, Term SOFR Loans, Alternative Currency Loans, Base Rate Loans, Canadian Prime Rate Loans, Letter of Credit Fees, the Commitment Fee, and the Term A-3 Loan Ticking Fee will be made; provided, further, that, the amount of such adjustments shall not exceed (i) in the case of the Applicable Rate for the Commitment Fee and the Term A-3 Loan Ticking Fee, an increase and/or decrease of 0.01% and (ii) in the case of the Applicable Rate for ~~LIBOR Rate Loans~~, Term SOFR Loans, Alternative Currency Loans, Base Rate Loans, Canadian Prime Rate Loans, and Letter of Credit Fees, an increase and/or decrease of 0.05%; provided, that, in no event shall the Applicable Rate for ~~LIBOR Rate Loans~~, Term SOFR Loans, Alternative Currency Loans, Base Rate Loans, Canadian Prime Rate Loans, Letter of Credit Fees, the Commitment Fee, or the Term A-3 Loan Ticking Fee be less than zero. The KPIs, the Company’s performance against the KPIs, and any related ESG Applicable Rate Pricing Adjustments resulting therefrom, will be determined based on certain certificates, reports and other documents, in each case, setting forth the calculation and measurement of the KPIs in a manner that is aligned with the Sustainability Linked Loan Principles and to be mutually agreed between the Company and the Sustainability Coordinator (each acting reasonably). Following the effectiveness of an ESG Amendment, any modification to the ESG Pricing Provisions shall be subject only to the consent of the Required Lenders so long as such modification does not have the effect of reducing the Applicable Rate for ~~LIBOR Rate Loans~~, Term SOFR Loans, Alternative Currency Loans, Base Rate Loans, Canadian Prime Rate Loans, Letter of Credit Fees, the Commitment Fee, or the Term A-3 Loan Ticking Fee to a level not otherwise permitted by this Section 2.20(a).

(b) The Sustainability Coordinator will (i) assist the Company in determining the ESG Pricing Provisions in connection with the ESG Amendment and (ii) assist the Company in preparing informational materials focused on ESG to be used in connection with the ESG Amendment.

(c) This Section 2.20 shall supersede any provisions in Section 10.01 to the contrary.

### **ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **3.01 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Credit Party, then the Administrative Agent or such Credit Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Credit Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Credit Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Credit Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Credit Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Credit Parties. Without limiting the provisions of subsection (a) above, the Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes; provided, however, that no payments made by a Foreign Borrower pursuant to this Section 3.01(b) shall be used to pay or reimburse Other Taxes imposed on or with respect to or otherwise payable by any Domestic Credit Party.

(c) Tax Indemnifications.

(i) Each of the Domestic Credit Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) 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 Company by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each of the Domestic Credit Parties shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for any amount that a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(iii) below.

(ii) Each of the Foreign Borrowers shall, and does hereby, jointly and severally indemnify each Recipient, and, within ten days after demand therefor, shall make payment in respect of, the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this

Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, in each case, solely in respect of obligations of or amounts otherwise payable by or for the account of the Foreign Borrowers hereunder or under any other Loan Document, 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 Company by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each of the Foreign Borrowers shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for any amount that a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(iii) below.

(iii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (y) the Administrative Agent and the Credit Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d), relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Credit Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or a Credit Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (iii).

(d) Evidence of Payments. Upon request by any Credit Party or the Administrative Agent, as the case may be, after any payment of Taxes by such Credit Party or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Credit Party shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Credit Party, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to such Credit Party or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Company and the Administrative Agent, at the time or times reasonably requested by the Company or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Company or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Company or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company or the Administrative Agent as will enable the Company or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and

submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), 3.01(e)(ii)(B) and 3.01(e)(ii)(D) below) shall not be required if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(ii) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Company and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed 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 Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty,

(II) executed 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 H-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 a 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 W-8BEN-E, as applicable; 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, W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-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 H-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 Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed 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 Company or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Company or the Administrative Agent as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Administrative Agent in writing of its legal inability to do so.

(iv) For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrowers and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(v) A Borrower organized under the laws of the United Kingdom, the Administrative Agent and any Lender claiming relief from United Kingdom withholding Tax under an applicable United Kingdom income tax treaty shall cooperate and shall use commercially reasonable efforts to complete any procedural formalities necessary for such Borrower to make payments without deduction of United Kingdom Taxes.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Credit Party or with respect to which any Credit Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Credit Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Credit Party, upon the request of the Recipient, agrees to repay the amount paid over to the Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental

Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Credit Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Credit Party or any other Person.

(g) **Survival.** Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

**3.02 Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to a Relevant Rate, the CDOR Rate, SOFR, or Term SOFR or to determine or charge interest rates based upon a Relevant Rate, the CDOR Rate, SOFR, or Term SOFR or to purchase or sell, or to take deposits of, any Alternative Currency in the applicable interbank market, then, upon notice thereof by such Lender to the Company (through the Administrative Agent), (a) any obligation of such Lender to make or maintain Alternative Currency Loans or Canadian Prime Rate Loans in the affected currency or currencies or, in the case of Loans denominated in Dollars, any obligation of such Lender to make or continue LIBOR Rate Loans or Term SOFR Loans, as applicable, or to convert Base Rate Loans to LIBOR Rate Loans or Term SOFR Loans, as applicable, shall be, in each case, suspended, (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component or the Term SOFR component of the Base Rate, as applicable, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component or the Term SOFR component of the Base Rate, as applicable, and (c) if such notice asserts the illegality of such Lender making or maintaining Canadian Prime Rate Loans the interest rate on which is determined by reference to the CDOR Rate component of the Canadian Prime Rate, the interest rate on which Canadian Prime Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the CDOR Rate component of the Canadian Prime Rate, in each case, until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Company shall, upon demand from such Lender (with a copy to the Administrative Agent), (A) prepay all Alternative Currency Loans in the affected currency or currencies, all LIBOR Rate Loans, or all Term SOFR Loans, as applicable, or (B) if applicable, (1) convert all LIBOR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate), (2) convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), or (3) convert all Alternative Currency Term Rate Loans denominated in Canadian Dollars of such Lender to Canadian Prime Rate Loans (the interest rate on which Canadian Prime Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the CDOR Rate component of the Canadian Prime Rate), in each case, immediately, or, in the case of LIBOR Rate Loans, Term SOFR Loans, or Alternative Currency Term Rate Loans, as applicable, on the last day of the Interest Period therefor if such Lender may lawfully continue to maintain such LIBOR Rate Loans, Term SOFR Loans, or Alternative Currency Term Rate Loans, as applicable, to such day, (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate, (iii) if such notice asserts the illegality of such Lender

determining or charging interest rates based upon Term SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR, and (ivii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the CDOR Rate, the Administrative Agent shall during the period of such suspension compute the Canadian Prime Rate applicable to such Lender without reference to the CDOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the CDOR Rate. Upon any such prepayment or conversion, the Company shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

### **3.03 Inability to Determine Rates.**

(a) If in connection with any request for a ~~LIBOR Rate Loan~~, a Term SOFR Loan, or an Alternative Currency Loan or a conversion of Base Rate Loans to ~~LIBOR Rate Loans or~~ Term SOFR Loans or a conversion of Canadian Prime Rate Loans to Alternative Currency Term Rate Loans denominated in Canadian Dollars or a continuation of any of such Loans, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) (1) no ~~Benchmark Replacement or Successor Rate, as applicable, for the Relevant Rate for the applicable Agreed Currency has been determined in accordance with Section 3.03(b) or Section 3.03(c), as applicable, and the circumstances under Section 3.03(b)(i) or the Scheduled Unavailability Date has occurred with respect to such Relevant Rate (as applicable) or (2) no~~ Term SOFR Successor Rate has been determined in accordance with Section 3.03(d) and the circumstances under Section 3.03(d)(i) or the Term SOFR Scheduled Unavailability Date has occurred, (2) ~~no Successor Rate for the applicable Relevant Rate has been determined in accordance with Section 3.03(c) and the circumstances under Section 3.03(c)(i) or the Scheduled Unavailability Date with respect to such Relevant Rate has occurred (as applicable), or (3) no applicable Canadian Benchmark Replacement has been determined in accordance with Section 3.03(b)(i), and the circumstances under Section 3.03(b)(i) have occurred~~, or (B) adequate and reasonable means do not otherwise exist for determining the Relevant Rate for the applicable Agreed Currency, the CDOR Rate, or Term SOFR, as applicable, for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed ~~LIBOR Rate Loan~~, Term SOFR Loan, or Alternative Currency Loan or in connection with an existing or proposed Base Rate Loan or Canadian Prime Rate Loan, or (ii) the Administrative Agent or the Required Lenders determine that for any reason that the Relevant Rate with respect to a proposed Loan denominated in an Agreed Currency, the CDOR Rate or Term SOFR, as applicable, for any requested Interest Period or determination date(s) does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Company and each Lender.

**Article XXII** Thereafter, (wx) the obligation of the Lenders to make or maintain ~~LIBOR Rate Loans~~, Term SOFR Loans, or Alternative Currency Loans in the affected currencies, as applicable, or to convert Base Rate Loans to ~~LIBOR Rate Loans or~~ Term SOFR Loans, ~~as applicable~~, or to convert Canadian Prime Rate Loans to Alternative Currency Term Rate Loans denominated in Canadian Dollars, in each case, shall be suspended to the extent of the affected Loans, Interest Period(s) or determination date(s), as applicable, (x) ~~in the event of a determination described in clause (w) with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended~~, (y) in the event of a determination described in clause (wx) with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, and (z) in the event of a determination described in clause (wx) with respect to the CDOR Rate component of the Canadian Prime Rate, the utilization of the CDOR Rate component in determining the Canadian Prime Rate shall be suspended, in each case, until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause Section 3.03(a)(ii), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

**Article XXIII** Upon receipt of such notice, (i) the Company may revoke any pending request for a Borrowing of, conversion to or continuation of ~~LIBOR Rate Loans or~~ Term SOFR Loans, ~~as applicable~~, or Borrowing of, or continuation of Alternative Currency Loans, in each case to the extent of the affected Loans, Interest Periods or determination date(s), as applicable or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount specified therein (or in connection with a request for Loans denominated in Canadian Dollars, into a request for a Borrowing of Canadian Prime Rate Loans denominated in Canadian Dollars), and (ii) (A) any outstanding ~~LIBOR Rate Loans shall be deemed to have been converted to Base Rate Loans at the end of their respective applicable Interest Period, (B) any outstanding~~ Term SOFR Loans shall be deemed to have been converted to Base Rate Loans at the end of their respective applicable Interest Period, (B) any outstanding Alternative Currency Term Rate Loans denominated in Canadian Dollars shall be deemed to have been converted to Canadian Prime Rate Loans at the end of their respective applicable Interest Period, and (C) any outstanding affected Alternative Currency Loans (other than Loans denominated in Canadian Dollars), at the Company's election, shall either (1) be converted into a Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Alternative Currency Loan immediately, in the case of an Alternative Currency Daily Rate Loan or at the end of the applicable Interest Period, in the case of an Alternative Currency Term Rate Loan or (2) be prepaid in full immediately, in the case of an Alternative Currency Daily Rate Loan, or at the end of the applicable Interest Period, in the case of an Alternative Currency Term Rate Loan; provided, that, if no election is made by the Company (x) in the case of an Alternative Currency Daily Rate Loan, by the date that is three Business Days after receipt by the Company of such notice or (y) in the case of an Alternative Currency Term Rate Loan, by the last day of the current Interest Period for the applicable Alternative Currency Term Rate Loan, the Company shall be deemed to have elected clause (1) above.

(b) ~~Except, in each case, with respect to the Term A-3 Loan and notwithstanding~~ Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) On ~~March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's~~ May 16, 2022 Refinitiv Benchmark Services (UK) Limited ("RBSL"), ~~the administrator ("IBA") of the CDOR Rate~~, announced in a public statement ~~that the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month Dollar LIBOR tenor settings. On the earliest calculation and publication of all tenors of the CDOR Rate will permanently cease immediately following a final publication on Friday, June 28, 2024. On the earlier~~ of (A) the date that all Available Tenors of ~~Dollar LIBOR~~ the CDOR Rate have either permanently or indefinitely ceased to be provided by ~~IBA~~ or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023, and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in RBSL and (B) June 28, 2024, if the then-current Canadian Benchmark is ~~LIBOR~~ the CDOR Rate, the Canadian Benchmark Replacement will replace such Canadian Benchmark for all purposes hereunder and under any other Loan Document in respect of any setting of such Canadian Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Canadian Benchmark Replacement is Daily ~~Simple SOFR Compounded CORRA~~, all interest payments will be payable on a monthly basis.

(ii) Upon ~~(A) the occurrence of a Canadian Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (a) of the definition of Benchmark Replacement are available, the~~ the, ~~the Canadian~~ Benchmark Replacement will replace the then-current Canadian Benchmark for all purposes hereunder and under any other Loan Document in respect of any Canadian Benchmark setting at or after 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the date notice of such Canadian Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any

other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Canadian Benchmark Replacement from Lenders comprising the Required Lenders (~~and any such objection shall be conclusive and binding absent manifest error; provided, that, solely in the event that the then-current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (a) of the definition of Benchmark Replacement unless the Administrative Agent reasonably determines that neither of such alternative rates is available. On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any other Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings~~ without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.

(iii) At any time that the administrator of the then-current Canadian Benchmark has permanently or indefinitely ceased to provide such Canadian Benchmark or such Canadian Benchmark has been announced by the administrator or the regulatory supervisor for the administrator of such Canadian Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored, ~~each Borrower~~ the Borrowers may revoke any request for a borrowing Borrowing of, conversion to or continuation of the relevant Loans to be made, converted or continued that would bear interest by reference to such Canadian Benchmark until ~~such~~ the Borrower's receipt of notice from the Administrative Agent that a Canadian Benchmark Replacement has replaced such Canadian Benchmark, and, failing that, ~~such Borrower~~ the Borrowers will be deemed to have converted any such request into a request for a borrowing Borrowing of or conversion to Base Canadian Prime Rate Loans. During the period referenced in the foregoing sentence, the component of Base the Canadian Prime Rate based upon the Canadian Benchmark will not be used in any determination of Base the Canadian Prime Rate.

(ivii) In connection with the implementation and administration of a Canadian Benchmark Replacement, the Administrative Agent will have the right to make Canadian Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Canadian Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement; ~~; provided, that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Canadian Benchmark Replacement Conforming Changes to the Company and the Lenders reasonably promptly after such amendment becomes effective.~~

(viii) The Administrative Agent will promptly notify the Borrowers and the Lenders of (A) the implementation of any Canadian Benchmark Replacement ~~and~~, (B) any occurrence of a Term CORRA Transition Event, and (C) the effectiveness of any Canadian Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.03(b)(iv), 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, will be conclusive and binding absent manifest error and may be made in its ~~sole~~ discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(b).

(ix) At any time (including in connection with the implementation of a Canadian Benchmark Replacement), ~~(A)~~ if the then-current Canadian Benchmark is a term rate (including Term ~~SOFR~~ CORRA or ~~LIBOR~~ the CDOR Rate), then ~~(A)~~ the Administrative Agent may remove any tenor of such Canadian Benchmark that is unavailable or non-representative for such Canadian Benchmark (including Canadian

Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for such Canadian Benchmark (including Canadian Benchmark Replacement) settings.

(vi) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this Section 3.03(b)(vi), if a Term CORRA Transition Event and its related Term CORRA Transition Date have occurred, then on and after such Term CORRA Transition Date (A) the Canadian Benchmark Replacement described in clause (a)(i) of such definition will replace the then-current Canadian Benchmark for all purposes hereunder or under any Loan Document in respect of any setting of such Canadian Benchmark on such day and all subsequent settings, >without any amendment to, or further action or consent of any other party to<, this Agreement or any other Loan Document; and (B) each Loan outstanding on the Term CORRA Transition Date bearing interest based on the then-current Canadian Benchmark shall convert, at the last day of the then current interest payment period, into a Loan bearing interest at the Canadian Benchmark Replacement described in clause (a)(i) of such definition for the respective Available Tenor as selected by the applicable Borrower as is available for the then-current Canadian Benchmark; provided, that, this Section 3.03(b)(vi) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrowers a Term CORRA Notice, and >so long as the Administrative Agent has not received, by 5:00 p.m. <(Toronto time) on the fifth (5th) Business Day after the date of the Term CORRA Notice, written notice of objection to such conversion to Term CORRA from Lenders comprising the Required Lenders or the Borrowers.

(vii) For the purposes of this Section 3.03(b), those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in Canadian Dollars shall be excluded from any determination of Required Lenders for purposes of the establishment of a Canadian Benchmark Replacement with respect to such Loans.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Company or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Company or Required Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(i) adequate and reasonable means do not exist for ascertaining the Relevant Rate for an Alternative Currency because none of the tenors of such Relevant Rate (including any forward-looking term rate thereof) is available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the applicable Alternative Currency Authority has made a public statement identifying a specific date after which all tenors of the Relevant Rate for an Alternative Currency (including any forward-looking term rate thereof) shall or will no longer be representative or made available, or used for determining the interest rate of loans denominated in such Alternative Currency, or shall or will otherwise cease; provided, that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such representative tenor(s) of the Relevant Rate for such Alternative Currency (the latest date on which all tenors of the Relevant Rate for such Alternative Currency (including any forward-looking term rate thereof) are no longer representative or available permanently or indefinitely, the “Scheduled Unavailability Date”); or

(iii) syndicated loans currently being executed and agented in the U.S., are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for an Alternative Currency;

**Article XXIV** or if the events or circumstances of the type described in Section 3.03(c)(i), (ii) or (iii) have occurred with respect to the Successor Rate for an Alternative Currency then in effect, then, the Administrative Agent and the Company may amend this Agreement solely for the purpose of replacing the Relevant Rate for an Alternative Currency or any then current Successor Rate for an Alternative Currency in accordance with this Section 3.03 with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the United States and denominated in such Alternative Currency for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the United States and denominated in such Alternative Currency for such benchmarks, ~~which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated~~ (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a “Successor Rate”), and any such amendment shall become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

**Article XXV** The Administrative Agent will promptly (in one or more notices) notify the Company and each Lender of the implementation of any Successor Rate.

**Article XXVI** Any Successor Rate shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

**Article XXVII** Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

**Article XXVIII** In connection with the implementation of ~~a, use, administration of or any conventions associated with SONIA, EURIBOR, or any proposed~~ Successor Rate, the Administrative Agent will have the right to make Alternative Currency Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Alternative Currency Conforming Changes will become effective without any further action or consent of any other party to this Agreement (except as set forth in the definition of “Alternative Currency Conforming Changes”); provided, that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Alternative Currency Conforming Changes to the Company and the Lenders reasonably promptly after such amendment becomes effective.

**Article XXIX** For the purposes of this Section 3.03(c), those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans denominated in the applicable Alternative Currency shall be excluded from any determination of Required Lenders for purposes of the establishment of a Successor Rate with respect to such Alternative Currency.

(d) ~~Solely with respect to the Term A-3 Loan and notwithstanding~~ Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Company or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Company or Required Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that: (i) adequate and reasonable means do not exist for ascertaining one month and three month interest periods of Term SOFR, including because the Term SOFR Screen Rate is not available or published on a current basis and such

circumstances are unlikely to be temporary; or (ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case, acting in such capacity, has made a public statement identifying a specific date after which one month and three month interest periods of Term SOFR or the Term SOFR Screen Rate shall no longer be made available, or permitted to be used for determining the interest rate of syndicated loans, or shall or will otherwise cease; provided, that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month and three month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the “Term SOFR Scheduled Unavailability Date”); then, on a date and time determined by the Administrative Agent (any such date, a “Term SOFR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant Interest Payment Date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Term SOFR Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any other Loan Document with Daily Simple SOFR plus the applicable SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (any such successor rate established pursuant to this Section 3.03(d), a “Term SOFR Successor Rate”). If the Term SOFR Successor Rate is Daily Simple SOFR plus the applicable SOFR Adjustment, all interest payments will be payable on a monthly basis.

**Article XXX** ~~Solely with respect to the Term A-3 Loan and notwithstanding Notwithstanding~~ anything to the contrary herein, (A) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (B) if the events or circumstances of the type described in clause (i) above or clause (ii) above have occurred with respect to the Term SOFR Successor Rate then in effect, then, in each case, the Administrative Agent and the Company may amend this Agreement solely for the purpose of replacing Term SOFR or any then-current Term SOFR Successor Rate in accordance with this Section 3.03(d) at the end of any Interest Period, relevant Interest Payment Date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then-existing convention for similar credit facilities syndicated and agented in the United States for such alternative benchmark and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then-existing convention for similar credit facilities syndicated and agented in the United States for such benchmark, ~~which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated~~. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a “Term SOFR Successor Rate”. Any such amendment shall become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

**Article XXXI** The Administrative Agent will promptly (in one or more notices) notify the Company and each Lender of the implementation of any Term SOFR Successor Rate. Any Term SOFR Successor Rate shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such Term SOFR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent. Notwithstanding anything else herein, if at any time any Term SOFR Successor Rate as so determined would otherwise be less than zero, such Term SOFR Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

**Article XXXII** In connection with the implementation of ~~a, use, administration of or any conventions associated with SOFR or any proposed~~ Term SOFR Successor Rate or Term SOFR, the Administrative Agent will have the right to make Term SOFR Conforming Changes from

time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Term SOFR Conforming Changes will become effective without any further action or consent of any other party to this Agreement (except as set forth in the definition of "Term SOFR Conforming Changes"); provided, that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Term SOFR Conforming Changes to the Company and the Lenders reasonably promptly after such amendment becomes effective.

**Article XXXIII** For purposes of this Section 3.03(d), those Lenders that either have not made, or do not have an obligation under this Agreement to make, Term SOFR Loans (or Loans accruing interest by reference to a Term SOFR Successor Rate, as applicable) shall be excluded from any determination of Required Lenders for purposes of the establishment of a Term SOFR Successor Rate with respect to such Term SOFR Loans.

### **3.04 Increased Costs.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (~~except any reserve requirement reflected in Section 3.04(e))~~) or the L/C Issuer;

(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 or the L/C Issuer or the applicable interbank market any other condition, cost or expense affecting this Agreement, ~~LIBOR Rate Loans made by such Lender,~~ Term SOFR Loans made by such Lender, or Alternative Currency Loans made by such Lender or any Letter of Credit or participation therein;

**Article XXXIV** and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any ~~LIBOR Rate Loan,~~ Term SOFR Loan, or any Alternative Currency Loans (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Company will pay (or cause the applicable Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loan held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Company will pay (or cause the applicable Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will

compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Company shall be conclusive absent manifest error. The Company shall pay (or cause the applicable Borrower to pay) such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation; provided that no Borrower shall be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. ~~The Company shall pay (or cause the applicable Borrower to pay) to each Lender or the L/C Issuer, as the case may be, as long as such Lender or the L/C Issuer shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the LIBOR Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender or the L/C Issuer (as determined by such Lender or the L/C Issuer in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan; provided the Company shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional costs from such Lender or the L/C Issuer. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional costs shall be due and payable 10 days from receipt of such notice.~~

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Company shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan or a Canadian Prime Rate Loan on a day other than the last day of the Interest Period, relevant interest payment date or payment period, as applicable, for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by any Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan or a Canadian Prime Rate Loan on the date or in the amount notified by the applicable Borrower;

(c) any failure by any Borrower to make payment of any Alternative Currency Loan (or interest due thereon) on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a ~~LIBOR Rate Loan, a Term SOFR Loan, or an Alternative Currency Term Rate Loan~~ on a day other than the last day of the Interest Period therefor as a result of a request by the Company pursuant to Section 10.13;

**Article XXXV** including any loss of anticipated profits, any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, from

fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Company shall also pay (or cause the applicable Borrower to pay) any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Company (or the applicable Borrower) to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Alternative Currency Term Rate Loan made by it at the Alternative Currency Term Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Alternative Currency Term Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to a Borrower through any Lending Office; provided, that, the exercise of this option shall not affect the obligation of such Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or any Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender or the L/C Issuer gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates), if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer. The Company hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if any Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Company may replace such Lender in accordance with Section 10.13.

**3.07 Survival.** All of the Borrowers' obligations under this Article III shall survive the termination of the commitments and the repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## **ARTICLE IV CONDITIONS PRECEDENT**

**4.01 Conditions to Effectiveness and Initial Credit Extension.** The occurrence of the Closing Date and the obligation of the L/C Issuer each Lender to make its initial Credit Extension hereunder on the Closing Date is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent (or its counsel) shall have received from the Credit Parties and, in the case of this Agreement, each Lender, either (i) a counterpart of this Agreement and the Security Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and the Security Agreement.

(b) The Administrative Agent (or its counsel) shall have received from each Borrower, a Note for each Lender as has been requested by such Lender.

(c) The Administrative Agent shall have received the satisfactory written opinions from the Company's counsel (addressed to the Administrative Agent and the Lenders and dated the Closing Date), in a form reasonably satisfactory to the Administrative Agent, and covering such other matters relating to the Credit Parties, this Agreement, the Loan Documents or the Transactions as the Administrative Agent shall reasonably request. The Borrowers hereby request such counsel to deliver such opinions.

(d) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Credit Party, the authorization of the Transactions to which such Credit Party is a party, and any other legal matters relating to the Credit Parties, this Agreement, the Loan Documents or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(e) The Administrative Agent shall have received (i) a Solvency Certificate and (ii) a certificate, dated the Closing Date and signed by the Chief Executive Officer of the Company, the President of the Company or an Authorized Officer of the Company, confirming that:

**Article XXXVI(x)** on the Closing Date, both before and after giving effect to the Credit Extensions and the other Transactions occurring on such date, no Default or Event of Default shall have occurred and be continuing; and

**Article XXXVII** (y) the representations and warranties of the Company and each other Credit Party contained in Article V or any other Loan Document delivered on the Closing Date, are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) as of such earlier date.

(f) The Administrative Agent shall have received:

(i) UCC financing statements, in form for filing, for each appropriate jurisdiction as is necessary, in the Administrative Agent's reasonable discretion, to perfect the Administrative Agent's security interest in the Collateral;

(ii) all certificates evidencing any certificated Equity Interests pledged to the Administrative Agent pursuant to the Security Agreement, together with duly executed in blank, undated stock powers attached thereto (unless, with respect to the pledged Equity Interests of any Foreign Subsidiary, such stock powers are deemed unnecessary by the Administrative Agent in its reasonable discretion under the Law of the jurisdiction of organization of such Person); and

(iii) copies of insurance policies or certificates of insurance of the Credit Parties evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including naming the Administrative Agent and its successors and assigns as additional insured (in the case of liability insurance) or lender's loss payee (in the case of property insurance) on behalf of the Lenders.

(g) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Closing Date, including (i) any fees payable under this Agreement or the Fee Letter, and (ii) to the extent invoiced at least two (2) Business Days prior to the Closing Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Company hereunder.

(h) The Administrative Agent shall have received certified copies of all consents, approvals, authorizations, registrations, filings and orders required to be made or obtained by all

Borrowers and all Guarantors in connection with the financings evidenced by this Agreement and the other Transactions, and all such consents, approvals, authorizations, registrations, filings and orders shall be in full force and effect and all applicable waiting periods shall have expired, and no investigation or inquiry by any Governmental Authority in respect of such financings or other Transactions shall be ongoing.

(i) Since March 31, 2017, there shall have occurred no events or conditions that have had, or are reasonably expected to have, a Material Adverse Effect.

(j) The Company shall have duly completed and submitted to the Administrative Agent a Loan Notice for funding of its Loans, and the Administrative Agent shall have received, not less than three Business Days prior to the Closing Date (or such shorter time as may be agreed by the Administrative Agent), a fully-executed Funding Indemnity Letter.

(k) All existing third party Indebtedness for borrowed money of the Company and its Restricted Subsidiaries (other than such third party Indebtedness for borrowed money which is permitted to remain outstanding pursuant to the terms of this Agreement) shall have been, or substantially concurrently, will be refinanced or repaid.

(l) The Credit Parties shall have provided (at least three (3) Business Days before the Closing Date) to the Administrative Agent and the Lenders the documentation and other information requested by the Administrative Agent and the Lenders in order to comply with applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, to the extent requested in writing at least ten (10) days prior to the Closing Date.

**Article XXXVIII** Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **4.02 Conditions to all Credit Extensions.**

The obligation of each Lender to honor any Request for Credit Extension is subject to the following conditions precedent:

(a) The representations and warranties of the Company and each other Credit Party contained in Article V or any other Loan Document shall be true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) as of such earlier date.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer and/or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Required Lenders (in the case of any Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an

Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension; provided, however, (i) the application of clauses (a) and (b) hereto to any Incremental Term Loan made in connection with any Limited Conditionality Transaction shall, at the Company's option, be subject to Section 1.02(d) and (ii) clauses (a) and (b) hereto shall not apply to any Loans made under any Refinancing Amendment.

## ARTICLE V REPRESENTATIONS AND WARRANTIES

Each Credit Party represents and warrants to the Administrative Agent and the Lenders that:

**5.01 Company Status.** Each of the Company and its Restricted Subsidiaries (i) is a duly organized and validly existing company in good standing under the laws of the jurisdiction of its organization, (ii) has the power and authority to own its property and assets and to transact the business in which it is engaged and presently proposes to engage, except where the failure to have such power and authority (x) has not had and (y) is not reasonably likely to have, a Material Adverse Effect and (iii) is duly qualified and is authorized to do business and is in good standing in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified (x) has not had (unless same has ceased to exist in all respects) or (y) is not reasonably likely to have, a Material Adverse Effect.

**5.02 Power and Authority.** Each of the Company and the other Credit Parties has the requisite power and authority to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is a party and has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Each of the Company and the other Credit Parties has duly executed and delivered each Loan Document to which it is a party and each such Loan Document constitutes the legal, valid and binding obligation of such Person enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

**5.03 No Violation.** Neither the execution, delivery or performance by the Company or any of the other Credit Parties of the Loan Documents to which it is a party, nor compliance by the Company or any of its Restricted Subsidiaries with the terms and provisions thereof, nor the consummation of the transactions contemplated herein or therein, (a) will contravene any material provision of any material applicable Law, (b) will violate or result in a default under any material indenture, agreement or instrument to which the Company or any of its Restricted Subsidiaries is a party or by which it or any of its property or assets are bound or to which it may be subject, (c) will result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Company or any of its Restricted Subsidiaries (other than pursuant to the Collateral Documents) or (d) will violate any provision of the certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of limited liability company, limited liability company agreement or equivalent organizational document, as the case may be, of any Credit Party.

**5.04 Litigation.** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Company, threatened in writing (i) with respect to any Loan Document, (ii) with respect to the Transaction, or (iii) with respect to the Company or any of its Restricted Subsidiaries that (x) have had (unless same has ceased to exist in all respects) or (y) are reasonably likely to have a Material Adverse Effect (taking into account reserves made or the benefit of warranties, indemnities or insurance cover in respect thereof).

### **5.05 Use of Proceeds; Margin Regulations.**

(a) The proceeds of the Initial Term Loan, the Initial Term A-2 Loan, and all Revolving Loans and Swing Line Loans shall be utilized (i) to refinance existing Indebtedness

(including the Existing Credit Agreement) and to pay fees and expenses incurred in connection with the Transaction and (ii) after application of such proceeds for the purposes described in preceding clause (i), for general corporate and working capital purposes of the Company and its Restricted Subsidiaries (including the financing of Permitted Acquisitions, Investments permitted under Section 7.05 and (subject to Section 5.05(d)) payments permitted under Section 7.06).

(b) The proceeds of the Term A-3 Loan shall be utilized in connection with the refinancing of the 2023 Unsecured Notes and to pay fees and expenses related thereto.

(c) All proceeds of Incremental Term Loans (other than the Term A-3 Loan) shall be utilized (i) to finance Permitted Acquisitions (and to pay the fees and expenses incurred in connection therewith) and to refinance any Indebtedness assumed as part of any such Permitted Acquisitions (and to pay all accrued and unpaid interest thereon, any prepayment premium associated therewith and the fees and expenses related thereto) and (ii) for other general corporate and working capital purposes of the Company and its Restricted Subsidiaries (including Investments permitted under Section 7.05 and (subject to Section 5.05(d)) payments permitted under Section 7.06).

(d) Neither the making of any Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Extension will violate or be inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

(e) At the time of each Credit Extension, not more than 25% of the value of the assets of the Company and its Restricted Subsidiaries taken as a whole (including all capital stock of the Company held in treasury) will constitute margin stock.

**5.06 Governmental Approvals.** Except as may have been obtained or made on or prior to the Closing Date (and which remain in full force and effect on the Closing Date), no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority is required to authorize or is required in connection with (i) the execution, delivery and performance of any Loan Document or (ii) the legality, validity, binding effect or enforceability of any Loan Document.

**5.07 Investment Company Act.** None of the Company or any of its Subsidiaries is an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**5.08 True and Complete Disclosure.** As of the Closing Date, neither the information memorandum nor any of the other written reports, financial statements, certificates or other information furnished by or on behalf of any Credit Party to the Administrative Agent (other than information of a general economic or industry specific nature, projected financial information or other forward looking information) in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished prior to the date on which this representation is made or deemed made), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Company represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made (it being understood that projections may vary from actual results and that such variances may be material).

**5.09 Financial Condition; Financial Statements.**

(a) As of the Closing Date, immediately after the consummation of the Transactions to occur on the Closing Date: (i) the fair value of the assets of the Company and its Restricted Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of the Company and its Restricted Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other

liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business; (iii) the Company and its Restricted Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured or otherwise due in the ordinary course of business, and do not intend to incur, or believe that they will incur, debts or other liabilities, including current obligations, beyond their ability to pay such debts or other liabilities as they become due (whether at maturity or otherwise); and (iv) the Company and its Restricted Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business contemplated as of the Closing Date for which they have unreasonably small capital. For purposes of the foregoing, the amount of any contingent liability at any time shall be computed as the amount that, in light of all the facts and circumstances existing at this time, represents the amount that can reasonably be expected to become an actual and matured liability as determined by the Company and its Restricted Subsidiaries in good faith.

(b) The audited consolidated statements of financial condition of the Company and its Subsidiaries at March 31, 2016 and March 31, 2017, and the related consolidated statements of income and cash flow and changes in shareholders' equity of the Company and its Subsidiaries for the fiscal years ended on such dates present fairly in all material respects the financial condition of the Company and its Restricted Subsidiaries at the date of such statements of financial condition and the results of operations of the Company and its Restricted Subsidiaries for the periods covered thereby. All such financial statements have been prepared in accordance with GAAP and practices consistently applied.

(c) Since March 31, 2021, no event or condition has occurred that (x) has had a Material Adverse Effect (unless same has ceased to exist in all respects) or (y) is reasonably likely to have a Material Adverse Effect.

(d) The projections of the Company and its Restricted Subsidiaries have been prepared on a basis consistent with the financial statements referred to in Section 5.09(b), and are based on good faith estimates and assumptions made by the management of the Company, which assumptions, taken as a whole, such management believed were reasonable on the Closing Date, it being recognized by the Lenders that such projections of future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results contained therein and such differences may be material.

**5.10 Security Interests.** On and after the Closing Date, the Collateral Documents (to the extent executed and in effect) will create in favor of the Administrative Agent a valid and enforceable security interest in the Collateral covered thereby and (i) when the Collateral constituting certificated securities (as defined in the Uniform Commercial Code) is delivered to the Administrative Agent, together with instruments of transfer duly endorsed in blank, the Liens under such Collateral Documents will constitute a fully perfected security interest in all right, title and interest of the pledgors thereunder in such Collateral, prior and superior in right to any other Person, and (ii) when UCC financing statements in appropriate form are filed in the applicable filing offices, the security interest created under such Collateral Documents will constitute a fully perfected security interest in all right, title and interest of the Credit Parties in the remaining Collateral to the extent perfection can be obtained by filing UCC financing statements, prior and superior to the rights of any other Person, except, in each case, for Permitted Liens.

#### **5.11 Compliance with ERISA.**

(a) Except to the extent it would not reasonably be expected to result in a Material Adverse Effect (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) all material contributions required to be made with respect to a Plan and a Multiemployer Plan have been timely made; (iii) each group health plan (as defined in Section 607(1) of ERISA or Section 4980B(g)(2) of the Code) maintained by the Company or any ERISA Affiliate which covers employees or former employees of the Company, any Restricted Subsidiary, or any ERISA Affiliate has at all times been operated in compliance with the provisions of Part 6 of subtitle B of Title I of ERISA and Section 4980B of the Code; (iv) no lien imposed under the Code or ERISA on the assets of the Company or any Restricted Subsidiary or any ERISA

Affiliate exists or to the knowledge of the Company, is reasonably likely to arise on account of any Plan or any Multiemployer Plan; (v) the Company and its Restricted Subsidiaries do not maintain or contribute to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) which provides benefits to retired employees or other former employees generally (other than as required by Section 601 of ERISA, and (vi) each Plan (and each related trust, insurance contract or fund) is in material compliance with its terms and with all applicable laws, including, without limitation, ERISA and the Code. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a determination letter or an opinion letter to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code; and no Plan has an Unfunded Current Liability which, when added to the aggregate amount of Unfunded Current Liabilities with respect to all other Plans, would reasonably be expected to have a Material Adverse Effect.

(b) As of the Second Amendment Effective Date, no Borrower is or will be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA or otherwise) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

(c) Except as would not otherwise have a Material Adverse Effect, each Foreign Pension Plan, if any, has been maintained in material compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; all contributions required to be made with respect to a Foreign Pension Plan, if any, have been timely made. Except as could not reasonably be expected to have a Material Adverse Effect (i) neither the Company nor any of its Restricted Subsidiaries has incurred any material obligation in connection with the termination, of or withdrawal from, any Foreign Pension Plan, and (ii) there are no accrued benefit liabilities (whether or not vested) under any Foreign Pension Plan that are unfunded that have not been adequately reserved for in accordance with generally accepted accounting principles in the applicable jurisdiction.

(d) No Credit Party maintains, contributes to, or has any liability or contingent liability with respect to, a Canadian Defined Benefit Pension Plan.

**5.12 Subsidiaries.** On and as of the Second Amendment Effective Date, the Company has no Subsidiaries other than those Subsidiaries listed on Schedule 5.12. Schedule 5.12 correctly sets forth, as of the Second Amendment Effective Date, (x) the percentage ownership by the Company in the Equity Interests of each Subsidiary directly owned by the Company and the percentage ownership of each Subsidiary's ownership in the Equity Interests of each other Subsidiary and (y) the name of each Immaterial Subsidiary and each Unrestricted Subsidiary. All outstanding shares of Equity Interests of each Restricted Subsidiary have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights. No Restricted Subsidiary has outstanding any securities convertible into or exchangeable for its Equity Interests or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of or any calls, commitments or claims of any character relating to, its Equity Interests or any stock appreciation or similar rights.

**5.13 Intellectual Property.** Each of the Company and each of its Restricted Subsidiaries owns or has the rights to use all patents, trademarks, service marks, trade names, copyrights and formulas, and other intellectual property, reasonably necessary for the conduct of their respective businesses as currently conducted and, to the knowledge of the Company, without any infringement, violation or misappropriation of the intellectual property rights of others, except such failure to own or have the right to use or such infringement, violation or misappropriation as (x) has not had (unless same has ceased to exist in all respects) and (y) is not reasonably likely to have, a Material Adverse Effect.

**5.14 Compliance with Statutes, Agreements, Etc.** Each of the Company and each of its Restricted Subsidiaries is in compliance with (i) all applicable Laws applicable to the conduct of its business and the ownership of its property and (ii) all contracts and agreements to which it is a party, in

each case, except such non-compliance as (x) has not had (unless same has ceased to exist in all respects) and (y) is not reasonably likely to, individually or in the aggregate, have a Material Adverse Effect.

**5.15 Environmental Matters.**

(a) Each of the Company and each of its Restricted Subsidiaries has complied with, and on the date of each Credit Extension is in compliance with, all applicable Environmental Laws and the requirements of any permits issued under such Environmental Laws and neither the Company nor any of its Restricted Subsidiaries is liable for any material penalties, fines or forfeitures for failure to comply with any of the foregoing. There are no pending or, to the knowledge of the Company, threatened Environmental Claims against the Company or any of its Restricted Subsidiaries or any real property owned or operated by the Company or any of its Restricted Subsidiaries. To the knowledge of the Company, there are no facts, circumstances, conditions or occurrences on any real property currently owned or operated by the Company or any of its Restricted Subsidiaries or on any property adjoining or in the vicinity of any such real property or at any formerly owned or operated real property that would reasonably be expected (i) to form the basis of an Environmental Claim against the Company or any of its Restricted Subsidiaries or (ii) to cause any such currently owned or operated real property to be subject to any material legal restrictions (other than as included in the Company's permits and approvals) on the ownership, occupancy, use or transferability of such real property by the Company or any of its Restricted Subsidiaries under any applicable Environmental Law.

(b) Notwithstanding anything to the contrary in this Section 5.15, the representations made in this Section 5.15 shall only be untrue if the aggregate effect of all conditions, failures, noncompliances, Environmental Claims and releases of Hazardous Material, in each case of the types described above, currently has or is reasonably likely to have a Material Adverse Effect.

**5.16 Properties.** Each of the Company and its Restricted Subsidiaries has good and marketable title to, or a validly subsisting leasehold interest in, all material tangible properties owned or leased by it (except for defects in title that are not reasonably likely to have a Material Adverse Effect), free and clear of all Liens, other than Permitted Liens.

**5.17 Labor Relations.** As of the Closing Date, neither the Company nor any of its Restricted Subsidiaries is engaged in any unfair labor practice that (a) has had (unless same has ceased to exist in all respects) or (b) is reasonably likely to have, a Material Adverse Effect. There is (i) no unfair labor practice complaint pending against the Company or any of its Restricted Subsidiaries or, to the knowledge of the Company or its Restricted Subsidiaries, threatened against any of them before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is so pending against the Company or any of its Restricted Subsidiaries or, to the knowledge of the Company or any of its Restricted Subsidiaries, threatened against any of them and (ii) no strike, labor dispute, slowdown or stoppage pending against the Company or any of its Restricted Subsidiaries or, to the knowledge of the Company or any of its Restricted Subsidiaries, threatened against any of them, except (with respect to any matter specified in clause (i) or (ii) above, either individually or in the aggregate) such as (x) has not had (unless same has ceased to exist in all respects) and (y) is not reasonably likely to have, a Material Adverse Effect.

**5.18 Tax Returns and Payments.** Each of the Company and each of its Restricted Subsidiaries has timely filed all federal income tax returns and all other material tax returns, domestic and foreign, required to be filed by it and has paid all material taxes and assessments payable by it which have become due, except for those contested in good faith and adequately disclosed and fully provided for on the financial statements of the Company and its Restricted Subsidiaries in accordance with GAAP. Each of the Company and each of its Restricted Subsidiaries has at all times paid, or has provided adequate reserves (in the good faith judgment of the management of the Company) for the payment of, all federal, state and foreign income taxes applicable for all prior fiscal years and for the current fiscal year to date.

**5.19 Insurance.** Set forth on Schedule 5.19 is a true, correct and complete summary of all insurance carried by each Credit Party on and as of the Closing Date, with the amounts insured set forth therein.

**5.20 Sanctions.** Neither the Company, nor any of its Subsidiaries, nor, to the knowledge of the Company and its Subsidiaries, any director, officer or employee thereof, is an individual or entity that is, or is owned 50% or more or controlled by any individual or entity that is (i) the target of any Sanctions, (ii) included on OFAC's "List of Specially Designated Nationals and Blocked Persons", HMT's "Consolidated List of Financial Sanctions Targets" and HMT's "Investment Ban List", or any similar list enforced by any other relevant and applicable Sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. The Company and its Subsidiaries have conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures reasonably designed to promote and achieve compliance with such Sanctions.

**5.21 Anti-Corruption Laws.** The Company and its Subsidiaries have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation that may be applicable from time to time in other jurisdictions and have instituted and maintained policies and procedures reasonably designed to promote and achieve material compliance with such laws.

**5.22 Affected Financial Institution Status.** Neither the Company nor any other Credit Party is an Affected Financial Institution.

**5.23 Covered Entity Status.** Neither the Company nor any other Credit Party is a Covered Party.

**5.24 Beneficial Ownership Certification.** As of the Second Amendment Effective Date, the information included in any Beneficial Ownership Certification, if applicable, is true and correct in all respects.

## **ARTICLE VI AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than Obligations under Secured Swap Agreements and Secured Cash Management Agreements and contingent obligations not yet due and owing), or any Letter of Credit shall remain outstanding, each Credit Party covenants and agrees with the Lenders and the Administrative Agent that:

**6.01 Information Covenants.** The Company will furnish to the Administrative Agent:

(a) within 90 days after the close of each fiscal year of the Company, the consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and retained earnings and of cash flows for such fiscal year and setting forth comparative consolidated figures for the preceding fiscal year and certified by Ernst & Young LLP or such other independent certified public accountants of recognized national standing as shall be reasonably acceptable to the Administrative Agent, in each case to the effect that such statements fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the dates indicated and the results of their operations and changes in financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years, together with a certificate of such accounting firm stating that in the course of its regular audit of the business of the Company and its Subsidiaries, which audit was conducted in accordance with generally accepted auditing standards, no Default or Event of Default which has occurred and is continuing has come to their attention or, if such a Default or an Event of Default has come to their attention, a statement as to the nature thereof; provided that any such statement made by such accountants may be limited to the extent required by accounting rules and guidelines;

(b) within 45 days after the close of the first three quarterly accounting periods in each fiscal year of the Company, the consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of income and retained earnings and of cash flows for such quarterly accounting

period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, all of which shall be in reasonable detail and certified by an Authorized Officer of the Company that they fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the dates indicated and the results of their operations and changes in their cash flows for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes;

(c) commencing with the fiscal quarter ending October 1, 2017, at the time of the delivery of the financial statements provided for in Sections 6.01(a) and 6.01(b), a Compliance Certificate to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof, which certificate shall, if delivered in connection with the financial statements in respect of a period ending on the last day of a fiscal quarter or fiscal year of the Company, setting forth (i) the calculations required to establish whether the Company and its Restricted Subsidiaries were in compliance with the financial covenants set forth in Sections 7.08 and 7.09 as at the end of such fiscal quarter or year, as the case may be and (ii) the calculation (in reasonable detail) of the Available JV Basket Amount and the Available Amount as at the last day of the respective fiscal quarter or fiscal year of the Company, as the case may be (which delivery may be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(d) not more than 65 days after the commencement of each fiscal year of the Company, consolidated budgets of the Company and its Restricted Subsidiaries in reasonable detail for each of the four fiscal quarters of such fiscal year, in each case as customarily prepared by management for its internal use setting forth the principal assumptions upon which such budgets are based;

(e) promptly, and in any event within five Business Days after an officer of the Company or any of its Restricted Subsidiaries obtains actual knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default, which notice shall specify the nature and period of existence thereof and what action the Company proposes to take with respect thereto, (ii) the filing or commencement of any action, suit or proceeding by or before any arbitrators or Governmental Authorities against or affecting the Company or any of its Restricted Subsidiaries which, if adversely determined, is reasonably likely to have a Material Adverse Effect and (iii) any other event which (x) has had (unless same has ceased to exist in all respects) or (y) is reasonably likely to have, a Material Adverse Effect;

(f) promptly upon transmission thereof, (i) copies of any filings and registrations with, and reports to, the SEC by the Company or any of its Restricted Subsidiaries, (ii) copies of all financial information, notices and reports as the Company or any of its Restricted Subsidiaries shall send to the holders of any material Indebtedness in their capacity as such holders (to the extent not theretofore delivered to the Lenders pursuant to this Agreement) and (iii) copies of all financial statements, proxy statements, notices and reports as the Company or any of its Restricted Subsidiaries shall send generally to analysts and the holders of their capital stock or public Indebtedness in their capacity as such holders (to the extent not theretofore delivered to the Lenders pursuant to this Agreement);

(g) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b), for any period in which the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, unaudited consolidating financial statements reflecting adjustments necessary to eliminate the accounts and results of operations of the Unrestricted Subsidiaries and their Subsidiaries from such financial statements delivered pursuant to Section 6.01(a) or 6.01(b), all in reasonable detail and certified by an Authorized Officer of the Company as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Company and its Restricted Subsidiaries in accordance with GAAP, subject only to normal year end audit adjustments and the absence of footnotes; and

(h) from time to time, such other information or documents (financial or otherwise) with respect to the Company or its Restricted Subsidiaries as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

Documents required to be delivered pursuant to Section 6.01(a), 6.01(b) or 6.01(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) or are available on the website of the SEC at <http://www.sec.gov>; provided, that the Company shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents. Notwithstanding anything contained herein, in every instance the Company shall be required to provide paper copies of the officer's certificates required by Section 6.01(c) to the Administrative Agent. Except for such officer's certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Company hereby acknowledges that (a) the Administrative Agent and/or BofA Securities will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Company hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to either of the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Person's securities. The Company hereby agrees that so long as the Company is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Company shall be deemed to have authorized the Administrative Agent, BofA Securities and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Company or its securities for purposes of United States Federal and state securities laws (provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (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 BofA Securities 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 as "Public Side Information." Notwithstanding the foregoing, the Company shall be under no obligation to mark any Borrower Materials "PUBLIC."

**6.02 Books, Records and Inspections.** The Company will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and account in which full, true and correct entries in all material respects in conformity with GAAP and all material requirements of law shall be made of all dealings and transactions in relation to its business and activities. The Company will, and will cause each of its Restricted Subsidiaries to, permit, upon reasonable prior notice to the senior financial officer or other Authorized Officer of the Company, officers and designated representatives of the Administrative Agent, at their expense unless an Event of Default has occurred, to visit and inspect under the guidance of officers of the Company any of the properties or assets of the Company or any of its Restricted Subsidiaries in whomsoever's possession, and to examine the books of account of the Company and any of its Restricted Subsidiaries and discuss the affairs, finances and accounts of the Company and of any of its Restricted Subsidiaries with, and be advised as to the same by, their officers and independent accountants, all at such reasonable times and intervals and to such reasonable extent as the Administrative Agent may desire; provided that unless an Event of Default has occurred and is continuing, such visits shall not occur more than one time per year.

**6.03 Insurance.**

(a) The Company will, and will cause each of its Restricted Subsidiaries to (i) maintain, with financially sound and reputable insurance companies, insurance on all its property in at least such amounts and against at least such risks as is consistent and in accordance with industry practice and (ii) furnish to the Administrative Agent, upon reasonable request, information as to the insurance carried. Such insurance shall include physical damage insurance on all real and personal property (whether now owned or hereafter acquired) on an all risk basis and business interruption insurance.

(b) The Company will (i) ensure that, in the case of insurance policies maintained by any Credit Party (other than business interruption insurance (if any), director and officer insurance and worker's compensation insurance), unless otherwise agreed by the Administrative Agent, (x) each general liability and umbrella liability insurance policy shall name the Administrative Agent (or its agent or designee) as additional insured and (y) each insurance policy covering Collateral shall name the Administrative Agent (or its agent or designee) as lender's loss payee and (ii) use commercially reasonable efforts to cause each provider of any such insurance in the foregoing clauses (x) and (y) to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent thirty days (or such shorter period as the Administrative Agent may agree) prior written notice before any such policy or policies shall be altered or canceled.

**6.04 Payment of Taxes.** The Company will pay and discharge, and will cause each of its Restricted Subsidiaries to pay and discharge, all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, in each case on a timely basis, and all lawful claims for material sums that have become due and payable which, if unpaid, would reasonably be expected to become a Lien not otherwise permitted under Section 7.03(a) and 7.03(h); provided that neither the Company nor any of its Restricted Subsidiaries shall be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings if it has maintained and continues to maintain adequate reserves with respect thereto in accordance with GAAP.

**6.05 Preservation of Existence.** The Company will do, and will cause each of its Restricted Subsidiaries to do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence and its material rights, franchises, authority to do business, licenses, certifications, accreditations and patents, except for rights, franchises, authority to do business, licenses, certifications, accreditations and patents the loss of which (individually and in the aggregate) is not reasonably likely to have, a Material Adverse Effect; provided, however, that any transaction permitted by Section 7.02 (including, without limitation, the dissolution of any Restricted Subsidiary permitted pursuant to said Section) will not constitute a breach of this Section 6.05.

**6.06 Compliance with Statutes, Etc.** The Company will, and will cause each of its Restricted Subsidiaries to, comply with all applicable Laws applicable to the conduct of its business and the ownership of its property, except for such noncompliance as is not reasonably likely to have a Material Adverse Effect.

**6.07 Compliance with Environmental Laws.** The Company will comply, and will cause each of its Restricted Subsidiaries to comply, in all material respects with all Environmental Laws applicable to the ownership or use of its real property now or hereafter owned or operated by the Company or any of its Restricted Subsidiaries, unless any such failure to comply, individually or in the aggregate, is not reasonably likely to have a Material Adverse Effect. If the Company or any of its Restricted Subsidiaries, or any tenant or occupant of any real property owned or operated by the Company or any of its Restricted Subsidiaries, causes or permits any intentional or unintentional act or omission resulting in the release of any Hazardous Material (except in compliance with applicable Environmental Laws), the Company agrees, if required to do so under any final legally binding applicable directive or order of any governmental agency, to undertake, and/or to cause any of its Restricted Subsidiaries, tenants or occupants to undertake, at their sole expense, any clean up, removal, remedial or other action required pursuant to Environmental Laws to remove and clean up any Hazardous Materials from any real property except where the failure to do so is not reasonably likely to have a Material Adverse Effect.

**6.08 ERISA.** As soon as possible and, in any event, within ten (15) Business Days after the Company, knows or may reasonably be expected to know of the occurrence of any ERISA Event, the Company will deliver to the Administrative Agent information as to such occurrence and the action, if any, that the Company, such Restricted Subsidiary or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed by the Company, the Restricted Subsidiary, the Plan administrator or such ERISA Affiliate to or with, the PBGC or any other governmental agency, or a Plan or Multiemployer Plan participant, and any notices received by the Company, such Restricted Subsidiary or ERISA Affiliate from the PBGC or other governmental agency or a Plan or Multiemployer Plan participant or the Plan administrator with respect thereto. Each of the following shall constitute an “ERISA Event” except as would not reasonably be expected to have a Material Adverse Effect: a Reportable Event has occurred (except to the extent that the Company has previously delivered to the Administrative Agent a certificate and notices (if any) concerning such event pursuant to the next clause hereof); a Plan has failed to satisfy the minimum funding standard within the meaning of Section 412 of the Code or Section 302 of ERISA, or the filing of an application for a waiver or modification of the minimum funding standard (including any required installment payments) or an extension of any amortization period under Section 412 of the Code or Section 303 or 304 of ERISA with respect to a Plan; a determination that any Plan is, or is expected to be, considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; a determination that any Plan or Multiemployer Plan has been or is expected to be terminated, reorganized, partitioned or declared insolvent under Title IV of ERISA; the receipt by the Company or any ERISA Affiliate of any notice, or a receipt by any Multiemployer Plan from the Company or any ERISA Affiliate of any notice, that a Multiemployer Plan is in endangered or critical status under Section 305 of ERISA; a Plan has an Unfunded Current Liability and to the knowledge of the Company, a withdrawal from all Multiemployer Plans would reasonably be expected to result in a Material Adverse Effect, all to the extent not previously disclosed to the Lenders; proceedings have been instituted to terminate or appoint a trustee to administer a Plan; the Company, any Restricted Subsidiary or any ERISA Affiliate incurs any material liability (including any indirect, contingent, or secondary liability) to or on account of the termination of or withdrawal from a Plan or Multiemployer Plan under Section 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or with respect to a Plan or Multiemployer Plan under Section 436(f), 4971, 4975 or 4980 of the Code or Section 409 or 502(i) or 502(l) of ERISA. The Company will also deliver to the Administrative Agent upon request a complete copy of the annual report (on IRS Form 5500-series) of each Plan (including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) required to be filed with the IRS. In addition to any certificate or notices delivered to the Administrative Agent pursuant to the first sentence hereof, any material notices relating to material liabilities received by the Company, any Restricted Subsidiary or any ERISA Affiliate with respect to any Plan or Foreign Pension Plan shall be delivered to the Administrative Agent no later than ten (10) Business Days after the date such notice has been received by the Company, the Restricted Subsidiary or the ERISA Affiliate, as applicable. The Company and each of its applicable Restricted Subsidiaries shall ensure that all Foreign Pension Plans administered by it obtain or retain (as applicable) registered status under and as required by applicable law and is administered in a timely manner in all respects in compliance with all applicable laws except where the failure to do any of the foregoing is not reasonably likely to have, a Material Adverse Effect.

**6.09 Good Repair.** The Company will, and will cause each of its Restricted Subsidiaries to, ensure that its material properties and equipment used in its business are kept in good repair, working order and condition, ordinary wear and tear excepted, except to the extent that failure to do so is not reasonably likely to have a Material Adverse Effect; provided, however, that the consummation of transactions permitted by Section 7.02 shall not be construed to be a violation of this Section 6.09.

**6.10 Additional Security; Further Assurances.**

(a) Upon (i) the formation or acquisition after the Closing Date of any wholly-owned Material Domestic Subsidiary, (ii) any wholly-owned Material Domestic Subsidiary ceasing to be an Excluded Subsidiary or (iii) any Subsidiary becoming (or being designated as) a wholly-owned Material Domestic Subsidiary, on or before the date that is sixty (60) days after the relevant event (or such longer period as the Administrative Agent may reasonably agree), the Company agrees to (x) cause such Restricted Subsidiary to execute and deliver a Guaranty Supplement and thereby guaranty all Obligations and (y) upon the reasonable request of the

Administrative Agent, deliver to the Administrative Agent such Organization Documents, resolutions and favorable opinions of counsel, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) The Company shall, and shall cause its Domestic Subsidiaries that are Credit Parties to, cause (i) 100% of the issued and outstanding Equity Interests of each Domestic Subsidiary (other than Foreign Subsidiary Holding Companies) directly owned by such Credit Party and (ii) (x) 65% (or such greater percentage that, due to a change in an applicable Law after the Closing Date, could not reasonably be expected to cause any material adverse tax consequences, as reasonably determined by the Company in consultation with the Administrative Agent) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and (y) 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each Foreign Subsidiary and each Foreign Subsidiary Holding Company directly owned by such Credit Party to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Collateral Documents, and, in connection with the foregoing, deliver to the Administrative Agent such other documentation as the Administrative Agent may reasonably request to perfect such Liens in accordance with the Collateral Documents; provided that, this clause (b) shall not apply with respect to any Excluded Property.

(c) The Company shall, and shall cause its Domestic Subsidiaries that are Credit Parties to, cause all Collateral (other than, for the avoidance of doubt, any Excluded Property) of each Credit Party (other than any Foreign Borrower) to be subject at all times to first priority, perfected Liens in favor of the Administrative Agent to secure the Obligations pursuant to the Collateral Documents (subject to Permitted Liens) and, in connection with the foregoing, deliver to the Administrative Agent such other documentation as the Administrative Agent may reasonably request to perfect such Liens in accordance with the Collateral Documents; provided that, no filings shall be required to be made with respect to any intellectual property constituting Collateral in the United States Patent and Trademark Office, the United States Copyright Office or any foreign equivalent of the foregoing.

(d) Notwithstanding anything contained herein to the contrary, no Credit Party shall be required to (i) grant to the Administrative Agent perfection through control agreements or perfection by control with respect to any Collateral (other than delivery of certificated pledged Equity Interests and promissory notes constituting Collateral, in each case to the extent required by the Security Agreement), including control agreements with respect to deposit accounts, securities accounts, and commodities accounts or (ii) take any actions under or execute any documents or instruments governed by the laws of any jurisdiction other than the United States or any state thereof to grant, perfect or provide for the enforcement of any security interest.

(e) Each of the Credit Parties agrees that each action required above by this Section 6.10 shall be completed as soon as possible, but in no event later than 60 days (or such later date as agreed by the Administrative Agent in its sole discretion) after such action is requested to be taken by the Administrative Agent or required to be taken by any Credit Party pursuant to the terms of this Section 6.10; provided that in no event will the Company or any of its Restricted Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 6.10.

(f) Release and Springing Lien.

(i) Immediately upon the commencement of any Collateral Release Period and without further action of any Person, the security interests of the Administrative Agent in the Collateral shall be terminated and released; provided that the Guaranty shall remain in effect during any such Collateral Release Period. During any Collateral Release Period, the Administrative Agent shall execute and deliver, at the Company's expense, all documents or other instruments that the Company shall reasonably request to evidence the termination and release of such security interests and shall return all Collateral in their possession to the Company. During any Collateral Release Period, the

Company shall not be required to comply with the Collateral Documents or the terms of Section 6.10, to the extent such terms require the creation and perfection of security interests or Liens on Collateral (it being understood that the Company shall continue to be required to comply with the terms of Section 6.10(a)).

(ii) Upon the termination of any Collateral Release Period, the security interests of the Administrative Agent in the Collateral shall, without any further action on the part of the Administrative Agent or any Credit Party, be reinstated and the provisions of the immediately preceding paragraph shall no longer apply (until the commencement of a subsequent Collateral Release Period). Promptly following the termination of any Collateral Release Period, the Credit Parties shall execute any and all documents, financing statements, agreements and instruments, and take all such actions (including the filing and recording of financing statements and other documents) that may be required under applicable Law or that the Administrative Agent shall reasonably request, to reinstate such security interests and to cause Section 6.10 to be satisfied (all at the expense of the Credit Parties), including with respect to any Restricted Subsidiaries or assets that would have been subjected to Section 6.10 had such terminated Collateral Release Period not been in effect; provided that all such actions shall be completed no later than sixty (60) days after the date of termination of such Collateral Release Period (or such later date as the Administrative Agent shall deem appropriate).

(iii) This Agreement and the other Loan Documents shall be amended prior to or as of the effectiveness of the Collateral Release Period or the termination of a Collateral Release Period to implement such changes to this Agreement and the other Loan Documents as the Administrative Agent deems necessary to give effect to the release or reinstatement of Liens contemplated by this Section 6.10(f), and the Lenders hereby authorize the Administrative Agent to enter into such amendments.

**6.11 Use of Proceeds.** All proceeds of the Loans shall be used as provided in Section 5.05.

**6.12 Performance of Obligations.** The Company will, and will cause each of its Restricted Subsidiaries to, perform all of its obligations under the terms of each material agreement, contract or instrument by which it is bound, except such non-performances as are not reasonably likely to cause, individually or in the aggregate, a Material Adverse Effect.

**6.13 Anti-Corruption Laws; Sanctions.** The Company will, and will cause each of its Subsidiaries to, conduct its businesses in compliance in all material respects with, and maintain and enforce policies and procedures reasonably designed to promote and achieve compliance with, (a) the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions with authority or jurisdiction over the Borrowers or their Subsidiaries and (b) applicable Sanctions.

**6.14 Unrestricted Subsidiaries.**

**Article XXXIX** The Company may at any time designate any Restricted Subsidiary (other than a Borrower) 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, (ii) immediately after giving effect to such designation, the Company shall be in compliance, on a Pro Forma Basis, with the financial covenants set forth in Sections 7.08 and 7.09, and, as a condition precedent to the effectiveness of any such designation, the Company shall deliver to the Administrative Agent in the case of a designation of a Restricted Subsidiary as an Unrestricted Subsidiary, a certificate setting forth in reasonable detail the calculations demonstrating such compliance and (iii) such Subsidiary also shall have been or will promptly be designated an “unrestricted subsidiary” (or otherwise not be subject to the covenants) under any Incremental Equivalent Debt, Incremental Term Loan, Refinancing Notes, Refinancing Junior Loans or other Indebtedness for borrowed money with an aggregate outstanding principal amount in excess of \$75,000,000, and any Permitted Refinancing Indebtedness of any of the foregoing (and successive Permitted Refinancing Indebtedness thereof), in each case, to the extent such concept exists therein. The designation of any

Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Company therein at the date of designation in an amount equal to the fair market value of the Company's or its Subsidiary's (as applicable) Investment therein (including the aggregate (undiscounted) principal amount of any Indebtedness owed by such Subsidiary to any Credit Party or Restricted Subsidiary at the time of such designation). The Investment resulting from such designation must otherwise be in compliance with Section 7.05. The Company may designate any Unrestricted Subsidiary as a Restricted Subsidiary at any time by written notice to the Administrative Agent if after giving effect to such designation, the Company is in compliance with the financial covenants set forth in Sections 7.08 and 7.09 on a Pro Forma Basis, no Default or Event of Default exists or would otherwise result therefrom and the Company complies with the obligations under clause (a) of Section 6.10. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence by the Company at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Company in Unrestricted Subsidiaries pursuant to the above in an amount equal to the fair market value at the date of such designation of the Company's or its Subsidiary's (as applicable) Investment in such Subsidiary (without giving effect to any write downs or write offs thereof).

## **ARTICLE VII NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than Obligations under Secured Swap Agreements and Secured Cash Management Agreements and contingent obligations not yet due and owing), or any Letter of Credit shall remain outstanding, each Credit Party covenants and agrees with the Lenders and the Administrative Agent that:

### **7.01 Changes in Business; Fiscal Year.**

(a) The Company and its Restricted Subsidiaries will not engage in any business other than a Permitted Business.

(b) The Company will not change the manner in which either the last day of its fiscal year or the last day of each of the first three (3) fiscal quarters of its fiscal year is calculated, in each case, without the prior written consent of the Administrative Agent.

**7.02 Consolidation; Merger; Sale or Purchase of Assets, Etc.** The Company will not, and will not permit any of its Restricted Subsidiaries to, wind up, liquidate or dissolve its affairs or merge or consolidate, or convey, sell, lease or otherwise dispose of all or any part of its property or assets (other than sales, leases or rentals of inventory in the ordinary course of business), or enter into any sale-leaseback transactions (such conveyance, sale, lease, sale-leaseback or other disposition, a "Disposition"), except that the following shall be permitted:

(a) the Company and its Restricted Subsidiaries may, as lessee or licensee, enter into operating leases, subleases, licenses or sub-licenses in the ordinary course of business with respect to real or personal property;

(b) Capital Expenditures by the Company and its Restricted Subsidiaries;

(c) to the extent constituting Dispositions, Investments permitted pursuant to Section 7.05 and Liens permitted pursuant to Section 7.03;

(d) the Company and its Restricted Subsidiaries may Dispose of (x) inventory in the ordinary course of business or (y) assets (whether tangible or intangible) which, in the reasonable opinion of such Person, are obsolete, uneconomic, no longer used or useful, worn-out or constitute surplus assets;

(e) any Disposition (other than with respect to the Equity Interests of any Borrower or Guarantor, unless all of the Equity Interests of such Guarantor are so sold), so long as (i) no

Event of Default then exists or would result therefrom, (ii) the Company or the respective Restricted Subsidiary receives at least fair market value (as determined in good faith by the Company or such Restricted Subsidiary, as the case may be), (iii) the total consideration in excess of \$5,000,000 received by the Company or such Restricted Subsidiary is at least 75% cash and is paid at the time of the closing of such sale and (iv) the Net Cash Proceeds therefrom are applied and/or reinvested as (and to the extent) required by Section 2.05(b)(ii); provided that for purposes of the 75% cash consideration requirement (A) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Obligations or that are owed to the Company or a Restricted Subsidiary) of the Company or any applicable Restricted Subsidiary (as shown on such Person's most recent balance sheet or in the notes thereto) that are (x) assumed by the transferee of any such assets or (y) otherwise cancelled or terminated in connection with the transaction with such transferee and, in each case, for which the Company and its Restricted Subsidiaries (to the extent previously liable thereunder) shall have been validly released by all relevant creditors in writing, (B) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such asset sale, (C) any securities, notes or other obligations or assets received by the Company or any Restricted Subsidiary from such transferee that are converted by such Person into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred eighty (180) days following the closing of the applicable asset sale, (D) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such asset sale (other than intercompany debt owed to a Borrower or its Restricted Subsidiaries), to the extent that the Borrowers and all of the Restricted Subsidiaries (to the extent previously liable thereunder) are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such asset sale and (E) any Designated Non-Cash Consideration received in respect of such asset sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (e) that is at that time outstanding, not in excess of \$175,000,000 (determined at the time any such asset sale is made) shall be deemed to be cash, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value;

(f) each of the Company and its Restricted Subsidiaries may sell or discount, in each case without recourse and in the ordinary course of business, overdue accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;

(g) each of the Company and its Restricted Subsidiaries may grant leases or subleases or licenses or sublicenses to other Persons not materially interfering with the conduct of the business of the Company or any of its Restricted Subsidiaries;

(h) Dispositions to the Company or any Restricted Subsidiary; provided that, any such Disposition made by (i) a Domestic Credit Party to a Foreign Borrower and (ii) a Foreign Borrower to a Non-Credit Party must be, in each case, permitted by Section 7.05;

(i) (i) any Subsidiary may merge with a Borrower in a transaction in which such Borrower is the surviving Person, (ii) any Restricted Subsidiary may merge with any Subsidiary in a transaction in which the surviving entity is a Restricted Subsidiary (so long as, (x) if a Borrower is a party to such transaction, such Borrower shall be the surviving Person and (y) if a Credit Party is a party to such transaction, the Credit Party shall be the surviving Person), (iii) any Person may merge into a Borrower in an Investment permitted by Section 7.05 in which such Borrower is the surviving Person, (iv) any Person may merge with a Restricted Subsidiary in an Investment permitted by Section 7.05 in which the surviving entity is a Restricted Subsidiary so long as if any party to such merger is a Credit Party, the surviving entity is a Credit Party and (v) in connection with the Disposition of a Restricted Subsidiary (other than a Borrower) or its assets permitted by this Section 7.02, such Restricted Subsidiary may merge with or into any other Person;

(j) the Company and its Restricted Subsidiaries may sell or exchange specific items of equipment, so long as the purpose of each such sale or exchange is to acquire (and results

within 90 days of such sale or exchange in the acquisition of) replacement items of equipment which are the functional equivalent of the item of equipment so sold or exchanged;

(k) Permitted Acquisitions;

(l) the Company and its Restricted Subsidiaries may consummate any Corporate Restructuring;

(m) Foreign Subsidiaries may from time to time (x) sell for cash accounts receivable (and rights ancillary thereto) pursuant to one or more Foreign Receivables Facilities and (y) repurchase accounts receivable theretofore sold pursuant to one or more Foreign Receivables Facilities, so long as any Foreign Receivables Facilities Indebtedness arising therefrom and any Liens securing the same are permitted pursuant to Sections 7.04 and 7.03, respectively;

(n) [reserved];

(o) any Restricted Subsidiary (other than a Borrower) may be wound up, liquidated or dissolved if (x) the Company determines in good faith that the winding up, liquidation or dissolution of such Restricted Subsidiary in the best interests of the Company and is not materially disadvantageous to the Lenders and (y) in the case of the winding up, liquidation or dissolution of a Guarantor, all or substantially all of the assets of such Guarantor held prior to such winding up, liquidation or dissolution have been transferred to another Subsidiary otherwise in accordance with the requirements of this Section 7.02;

(p) the Company and its Restricted Subsidiaries may liquidate or otherwise dispose of cash and Cash Equivalents in the ordinary course of business, in each case for cash at fair market value (as determined in good faith by management of the Company or such Restricted Subsidiary);

(q) the Disposition of Investments in joint ventures to the extent required by, or made pursuant to, any buy/sell arrangement or similar binding arrangement between joint venture parties;

(r) Dividends permitted pursuant to Section 7.06;

(s) the sale and leaseback of an asset acquired or constructed after the Closing Date in connection with an IRB Sale-Leaseback Transaction; provided that (i) no Event of Default then exists or would result therefrom, (ii) the proceeds of the respective IRB Sale-Leaseback Transaction shall be entirely cash, be paid at the time of the closing of such transaction and equal to at least 90% of the aggregate amount expended by the Company or its Restricted Subsidiary in acquiring or constructing such asset (or, if not then acquired or constructed, 90% of the fair market value of the assets subject to such IRB Sale-Leaseback Transaction), (iii) the aggregate amount of all proceeds received by the Company and its Restricted Subsidiaries from all IRB Sale-Leaseback Transactions shall not exceed the greater of \$115,000,000 and 3.00% of Consolidated Total Assets, (iv) the Attributable Indebtedness (if any) resulting from such IRB Sale-Leaseback Transaction shall be permitted by Section 7.04(t), (v) the Net Cash Proceeds therefrom are applied and/or reinvested as (and to the extent) required by Section 2.05(c), and (vi) the respective IRB Sale-Leaseback Transaction occurs within one year after the acquisition or construction (as applicable) of such assets;

(t) the sale and leaseback of batteries and related accessories by Foreign Subsidiaries (each, a “Foreign Battery Sale-Leaseback Transaction”); provided that (i) the proceeds of the respective Foreign Battery Sale-Leaseback Transaction shall be entirely cash, be paid at the time of the closing of such transaction and equal at least 90% of the fair market value of the assets subject to such Foreign Battery Sale-Leaseback Transaction, and (ii) each such Foreign Battery Sale-Leaseback Transaction gives rise to Attributable Indebtedness that is permitted by Section 7.04(w);

(u) Dispositions in the form of sale and leaseback transactions shall be permitted so long as (i) the sale or transfer of the property thereunder is otherwise permitted by this Section 7.02 (other than this clause (u)), (ii) any Capitalized Lease Obligations arising in connection therewith are permitted by Section 7.04 and (iii) any Liens arising in connection therewith (including Liens deemed to arise in connection with any such Capitalized Lease Obligations) are permitted by Section 7.03;

(v) Dispositions resulting from any casualty or insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Company or any Restricted Subsidiary;

(w) the Company and its Restricted Subsidiaries may from time to time (i) sell for cash accounts receivable (and rights ancillary thereto) pursuant to one or more Receivables Facilities and (ii) repurchase accounts receivable theretofore sold pursuant to one or more Receivables Facilities, so long as any Receivables Facilities Indebtedness arising therefrom and any Liens securing the same are permitted pursuant to Sections 7.04 and 7.03, respectively;

(x) the Company and its Restricted Subsidiaries may dispose of assets not otherwise permitted pursuant to this Section 7.02, so long as (i) no Event of Default then exists or would result therefrom, (ii) the Net Cash Proceeds (if any) therefrom are applied and/or reinvested as (and to the extent) required by Section 2.05(b)(ii) and (iii) the aggregate consideration received by the Company and its Restricted Subsidiaries in respect of all assets disposed of pursuant to this clause (x) shall not exceed an amount equal to 15% of Consolidated Total Assets of the Company and its Restricted Subsidiaries;

(y) Dispositions of the Equity Interests of, or the assets or securities of, Unrestricted Subsidiaries;

(z) Dispositions of Equity Interests deemed to occur upon the exercise of stock options, warrants or other convertible securities if such Equity Interests represent (i) a portion of the exercise price thereof or (ii) withholding incurred in connection with such exercise;

(aa) Dispositions of non-core assets (which may include real property) acquired in an Acquisition permitted under this Agreement to the extent such Disposition is consummated within one (1) year of such Acquisition;

(bb) the sale or discounting of accounts receivables due from customers of the Company or any Restricted Subsidiary in connection with a Supply Chain Financing Transaction; provided, that, (i) immediately before and after giving effect to any such sale or discounting, no Default shall have occurred and be continuing and (ii) such sale or discounting are made for no less than fair market value (as determined in good faith by the Company); and

(cc) any Immaterial Asset Sale.

To the extent the Required Lenders waive the provisions of this Section 7.02 with respect to the Disposition of any Collateral, or any Collateral is sold or otherwise disposed of as permitted by this Section 7.02, such Collateral (unless transferred to the Company or a Restricted Subsidiary thereof) shall be Disposed of free and clear of the Liens created by the Collateral Documents and the Administrative Agent shall take such actions as are appropriate in connection therewith.

**7.03 Liens.** The Company will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets of any kind (real or personal, tangible or intangible) of the Company or any of its Restricted Subsidiaries, whether now owned or hereafter acquired, except for the following (collectively, the "Permitted Liens"):

(a) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or Liens for taxes, assessments or governmental charges or levies being

contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP;

(b) Liens in respect of property or assets of the Company or any of its Restricted Subsidiaries imposed by law which were incurred in the ordinary course of business and which have not arisen to secure Indebtedness for borrowed money, such as carriers', warehousemen's and mechanics' Liens, statutory and common law landlord's Liens, and other similar Liens arising in the ordinary course of business, and which either (x) do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company or any of its Restricted Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or asset subject to such Lien;

(c) Liens created by or pursuant to this Agreement and the Collateral Documents;

(d) Liens in existence on the Second Amendment Effective Date which are listed, and the property subject thereto described, in Schedule 7.03, plus any extensions, replacements, refinancings or renewals of such Liens; provided that (x) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the time of any such renewal, replacement, refinancing or extension (other than as permitted by Section 7.04) and (y) any such renewal, replacement, refinancing or extension does not encumber any additional assets or properties of the Company or any of its Restricted Subsidiaries (other than the proceeds and products thereof and accessions and improvements thereto);

(e) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.01(j);

(f) Liens (other than any Lien imposed by ERISA) (x) incurred or deposits made in the ordinary course of business of the Company and its Restricted Subsidiaries in connection with workers' compensation, unemployment insurance and other types of social security, (y) to secure the performance by the Company and its Restricted Subsidiaries of tenders, statutory obligations (other than excise taxes), surety, stay and customs bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (z) to secure the performance by the Company and its Restricted Subsidiaries of leases of real property, to the extent incurred or made in the ordinary course of business;

(g) licenses, sublicenses, leases or subleases granted to other Persons permitted under Section 7.02(a);

(h) Permitted Encumbrances;

(i) Liens arising from or related to precautionary UCC financing statements regarding operating leases entered into by the Company and its Restricted Subsidiaries;

(j) Liens created pursuant to Capital Leases permitted pursuant to Section 7.04(d); provided that (x) such Liens only serve to secure the payment of Indebtedness arising under such Capitalized Lease Obligations and (y) the Lien encumbering the asset giving rise to the Capitalized Lease Obligation does not encumber any other asset of the Company or any of its Restricted Subsidiaries;

(k) Liens arising pursuant to purchase money mortgages or security interests securing Indebtedness representing the purchase price of assets acquired after the Closing Date by the Company and its Restricted Subsidiaries; provided that (i) any such Liens attach only to the assets so purchased, and (ii) the Indebtedness secured thereby is permitted to be incurred pursuant to Section 7.04(d);

(l) Liens on property or assets acquired pursuant to an Acquisition permitted hereunder, or on property or assets of a Restricted Subsidiary in existence at the time such Restricted Subsidiary is acquired pursuant to an Acquisition; provided that (i) any Indebtedness that is secured by such Liens is permitted to exist under Section 7.04 and (ii) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Acquisition and do not attach to any other asset of the Company or any of its Restricted Subsidiaries;

(m) restrictions imposed in the ordinary course of business on the sale or distribution of designated inventory pursuant to agreements with customers under which such inventory is consigned by the customer or such inventory is designated for sale to one or more customers;

(n) Liens in favor of customs or revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(o) Liens on the assets of a Foreign Subsidiary which is not a Credit Party securing Indebtedness incurred by such Foreign Subsidiary in accordance with the terms of Section 7.04(g);

(p) Liens securing Permitted Refinancing Indebtedness permitted pursuant to Section 7.04(n);

(q) other Liens that (x) were not incurred in connection with borrowed money, (y) do not encumber any Collateral and (z) do not secure obligations in excess of \$50,000,000 in the aggregate for all such Liens;

(r) [reserved];

(s) Liens securing Attributable Indebtedness of (i) the Company or any wholly-owned Domestic Subsidiary in respect of IRB Sale-Leaseback Transactions permitted by Section 7.04(t) and (ii) Foreign Subsidiaries in respect of Foreign Battery Sale-Leaseback Transactions permitted by Section 7.04(w); provided that (x) such Liens are created substantially simultaneously with the consummation of the respective transaction and (y) such Liens extend to and cover only the capital assets and improvements financed with such Attributable Indebtedness;

(t) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit or commodity trading or brokerage accounts or other funds maintained with a creditor depository institution;

(u) Liens solely on any cash earnest money deposits made by the Company or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement entered into in connection with an Investment permitted by Section 7.05;

(v) Liens consisting of, or created in connection with, an agreement to sell or transfer any property in a transaction permitted under Section 7.02, in each case, solely to the extent such sale or transfer would have been permitted on the date of the creation of such Lien;

(w) Liens securing Refinancing Notes, Refinancing Junior Loans or Incremental Equivalent Debt; provided that any Incremental Equivalent Debt of Foreign Borrowers shall be unsecured;

(x) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Equity Interests of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(y) any interest or title of a licensor under any license or sublicense entered into by the Company or any Restricted Subsidiary as a licensee or sublicensee (A) existing on the Closing Date or (B) in the ordinary course of its business;

(z) Liens that are customary contractual rights of set-off relating to purchase orders and other similar agreements entered into in the ordinary course of business;

(aa) Liens granted in the ordinary course of business to secure liabilities for premiums or reimbursement obligations to insurance carriers; provided, that such Liens shall at no time encumber assets other than the unearned portion of any insurance premiums, the insurance policies and the proceeds thereof;

(bb) Liens on deposits or other amounts held in escrow to secure contractual payments (contingent or otherwise) payable by the Company or its Restricted Subsidiaries to a seller after the consummation of an Acquisition permitted hereunder;

(cc) Liens on assets of Foreign Subsidiaries arising under Foreign Receivables Facilities or Foreign Receivables Indebtedness;

(dd) Liens on assets of the Company and its Restricted Subsidiaries arising under Receivables Facilities or Receivables Indebtedness;

(ee) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be incurred in accordance with Section 7.04; provided, any such Liens on the assets of any Credit Party shall be subordinated to the Obligations in a manner reasonably satisfactory to the Administrative Agent; and

(ff) other Liens securing Indebtedness permitted by Section 7.04; provided that the aggregate amount obligations secured by such Liens shall not exceed the greater of (i) \$230,000,000 and (ii) 6.25% of Consolidated Total Assets.

**7.04 Indebtedness.** The Company will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) (i) Indebtedness created under the Loan Documents (including with respect to Specified Refinancing Term Loans), (ii) Indebtedness of the Credit Parties evidenced by Refinancing Notes and any Permitted Refinancing Indebtedness in respect thereof and (iii) Indebtedness of the Credit Parties evidenced by Refinancing Junior Loans and any Permitted Refinancing Indebtedness in respect thereof;

(b) Indebtedness outstanding on the Second Amendment Effective Date and listed on Schedule 7.04 and any Permitted Refinancing thereof;

(c) Indebtedness under Swap Agreements entered into to protect the Company against fluctuations in interest rates in respect of Indebtedness otherwise permitted under this Agreement;

(d) (i) Capitalized Lease Obligations and Indebtedness of the Company and its Restricted Subsidiaries representing purchase money Indebtedness secured by Liens permitted pursuant to Section 7.03(k); provided that (x) no Event of Default shall have occurred and be continuing at the time such Capitalized Lease Obligations or Indebtedness is incurred and (y) after giving effect to the incurrence of such Capitalized Lease Obligations and/or Indebtedness, the Company shall be in compliance with the financial covenants set forth in Section 7.08 and 7.09 recomputed as of the end of the period of the four fiscal quarters most recently ended for which the Company has delivered financial statements pursuant to Section 6.01(a) or 6.01(b) after giving effect to such Capitalized Lease Obligations and/or Indebtedness on a Pro Forma Basis and (ii) any Permitted Refinancing thereof;

(e) intercompany Indebtedness of the Company to any Restricted Subsidiary and of any Restricted Subsidiary to the Company or any other Restricted Subsidiary; provided that (x)

Indebtedness of any Foreign Subsidiary to any Domestic Credit Party and Indebtedness of any Non-Credit Party to any Credit Party shall, in each case, be subject to the limitations set forth in Section 7.05(f) and (y) any Indebtedness owing by any Credit Party to a Non-Credit Party, or owing by any Domestic Credit Party to any Foreign Borrower, shall, in the case of this clause (y), be unsecured and subordinated in right of payment to the Obligations on a basis, and pursuant to an agreement, reasonably satisfactory to the Administrative Agent;

(f) (i) Indebtedness of a Restricted Subsidiary acquired pursuant to an Acquisition permitted hereunder (or Indebtedness assumed at the time of such 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 Acquisition and (y) the aggregate principal amount of all such Indebtedness outstanding at any time shall not exceed the greater of (A) \$300,000,000 and (B) 8.25% of Consolidated Total Assets, (ii) Indebtedness of a Restricted Subsidiary acquired pursuant to an Acquisition permitted hereunder (or Indebtedness assumed at the time of such 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 Acquisition, (y) such Indebtedness is of the type described in Section 7.04(d) and (z) the aggregate principal amount of all such Indebtedness outstanding at any time shall not exceed \$50,000,000 (collectively "Permitted Acquired Debt") and (iii) any Permitted Refinancing thereof;

(g) unsecured Indebtedness of Restricted Subsidiaries that are not Credit Parties; provided that the aggregate principal amount of all such Indebtedness outstanding at any time for all such Restricted Subsidiaries shall not exceed the greater of (x) \$545,000,000 and (y) an amount equal to 14.50% of Consolidated Total Assets;

(h) Indebtedness of the Company under Shareholder Subordinated Notes issued pursuant to Section 7.06(b);

(i) Guarantees by the Company or any Restricted Subsidiary of Indebtedness or other obligations of the Company or any Restricted Subsidiary permitted to be incurred under this Section 7.04; provided that the aggregate amount of Indebtedness and other payment obligations (other than in respect of any overdrafts and related liabilities arising in the ordinary course of business from treasury, depository and cash management services or in connection with any automated clearing house transfer of funds) of Non-Credit Parties that is Guaranteed by any Credit Party, or of Foreign Borrowers that is Guaranteed by a Domestic Credit Party, shall, in each case, be subject to Section 7.05(f);

(j) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business so long as such Indebtedness is extinguished within three Business Days of the incurrence thereof;

(k) Indebtedness in respect of Other Hedging Agreements to the extent permitted by Section 7.05(m) and forward commodities purchases to the extent permitted by Section 7.05(o);

(l) Indebtedness of the Company or any of its Restricted Subsidiaries evidenced by completion guarantees, performance bonds and surety bonds incurred in the ordinary course of business for purposes of insuring the performance of the Company or such Restricted Subsidiary;

(m) Indebtedness of the Company or any Restricted Subsidiary arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price, earn out or other similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Restricted Subsidiary permitted under this Agreement, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition; provided that the maximum assumable liability in respect of all such Indebtedness

shall at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(n) Permitted Refinancing Indebtedness incurred in respect of (and to refinance) Indebtedness theretofore outstanding (and permitted to be outstanding) pursuant to Section 7.04(b), 7.04(d), 7.04(f), 7.04(g) and 7.04(y) and otherwise in accordance with Section 7.12;

(o) [reserved];

(p) additional Indebtedness of the Company and its Restricted Subsidiaries not otherwise permitted hereunder not to exceed an aggregate principal amount at any time outstanding equal to the greater of (i) \$230,000,000 and (ii) 6.25% of Consolidated Total Assets;

(q) [reserved];

(r) [reserved];

(s) unsecured Indebtedness of the Credit Parties, so long as (i) no Event of Default shall have occurred and be continuing at the time such Indebtedness is incurred, and (ii) the Company shall be in compliance with the financial covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to the incurrence of any such Indebtedness;

(t) Attributable Indebtedness of the Company or any wholly-owned Domestic Subsidiary arising in connection with IRB Sale-Leaseback Transactions; provided that the aggregate amount of such Indebtedness shall not exceed at any time outstanding an amount equal to the greater of (i) \$115,000,000 and (ii) 3.00% of Consolidated Total Assets;

(u) Indebtedness incurred by the Company or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within five Business Days following such drawing or incurrence;

(v) Indebtedness consisting of take-or-pay obligations contained in supply arrangements and incurred in the ordinary course of business in an aggregate amount not to exceed \$150,000,000 at any time outstanding;

(w) Attributable Indebtedness of Foreign Subsidiaries in connection with Foreign Battery Sale-Leaseback Transactions pursuant to Section 7.02(t) not to exceed \$30,000,000 at any time outstanding;

(x) (i) Indebtedness of the joint ventures in an aggregate principal amount not to exceed \$50,000,000 at any time outstanding and (ii) Guarantees of the Company consisting of a guaranty of the Company's "ratable portion" of such Indebtedness (determined using the Company's percentage of its indirect equity ownership interest in such joint ventures);

(y) Indebtedness in respect of (i) one or more series of notes issued by any of the Domestic Borrowers (or, to the extent unsecured, the Foreign Borrowers) that are either (x) senior or subordinated and unsecured or (y) secured by Liens on the Collateral ranking junior to or 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 any Registered Equivalent Notes issued in exchange therefor), and (ii) loans made to any of the Domestic Borrowers (or, to the extent

unsecured, the Foreign Borrowers) that are either (x) senior or subordinated and unsecured or (y) secured by Liens on Collateral ranking junior 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 shall not exceed the amount permitted to be incurred under the Incremental Amount, provided that (x) the Company shall have delivered a certificate to the Administrative Agent demonstrating that the Company is in compliance with the financial covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to the incurrence of any such Indebtedness (assuming for such calculation that such Incremental Equivalent Debt is fully drawn) and (y) in the case of Incremental Equivalent Debt that is secured, such Incremental Equivalent Debt shall be subject to a Market Intercreditor Agreement reasonably satisfactory to the Administrative Agent and the Company, (B) the incurrence of such Indebtedness shall be subject to clauses (v), (vi) and (xi) of Section 2.18(c), as if such Incremental Equivalent Debt constituted Incremental Term Loans; provided that clauses (v), (vi) and (xi) of Section 2.18(c) shall not apply to any bridge facility on customary terms if the long-term indebtedness that such bridge facility is to be converted into satisfies the maturity, prepayment and amortization restrictions in such clauses, (C) if any Incremental Term Loan, Refinancing Notes or Refinancing Junior Loan shall have “most-favored-nation” protection for the benefit of the lenders providing such facility, any Incremental Equivalent Debt (x) in the case of any Domestic Borrower, that constitutes term loans secured on a pari passu basis with the Obligations or (y) in the case of any Foreign Borrower, that is comprised of senior unsecured term loans, in each case, shall be subject to such “most-favored-nation” protection, (D) no Event of Default shall have occurred and be continuation at the time such Incremental Equivalent Debt is incurred, (E) such Incremental Equivalent Debt shall not be secured by a Lien on any asset that does not constitute Collateral, (F) there shall be no obligors in respect of any Incremental Equivalent Debt that are not Credit Parties and (G) the terms and conditions including such financial maintenance covenants (if any) applicable to such Incremental Equivalent Debt shall not be, when taken as a whole, materially more favorable (as determined in good faith by the board of directors of the Company), 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), and any Permitted Refinancing Indebtedness in respect thereof;

(z) to the extent constituting Indebtedness, contingent obligations arising under indemnity agreements to title insurance companies to cause such title insurers to issue title insurance policies in the ordinary course of business with respect to the real property of the Company or any Restricted Subsidiary;

(aa) to the extent constituting Indebtedness, customary indemnification and purchase price adjustments or similar obligations (including earn-outs) incurred or assumed in connection with Investments and Dispositions otherwise permitted hereunder;

(bb) to the extent constituting Indebtedness, deferred compensation or similar arrangements payable to future, present or former directors, officers, employees, members of management or consultants of the Company and the Restricted Subsidiaries;

(cc) Indebtedness consisting of the financing of insurance premiums;

(dd) unsecured Indebtedness in respect of obligations of the Company or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money;

(ee) to the extent constituting Indebtedness, Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Company and its Restricted Subsidiaries;

(ff) Indebtedness of Foreign Subsidiaries in an aggregate amount not to exceed \$100,000,000 with respect to Foreign Receivables Facilities and Foreign Receivables Indebtedness; and

(gg) Indebtedness of the Company and its Restricted Subsidiaries in an aggregate amount not to exceed \$150,000,000 with respect to Receivables Facilities and Receivables Indebtedness.

**7.05 Advances; Investments; Loans.** The Company will not, and will not permit any of its Restricted Subsidiaries to, lend money or extend credit or make advances to any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or otherwise acquire (in one or a series of related transactions) all or substantially all of the property or assets or business of another Person (other than purchases or other acquisitions of inventory, materials and equipment in the ordinary course of business) or assets constituting a business unit, line of business or division of any Person (each of the foregoing an "Investment" and, collectively, "Investments"), except that:

(a) Investments in the form of cash and Cash Equivalents shall be permitted;

(b) the Company and its Restricted Subsidiaries may acquire and hold receivables owing to it, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms (including the dating of receivables) of the Company or such Restricted Subsidiary;

(c) the Company and its Restricted Subsidiaries may acquire and own investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(d) Swap Agreements entered into in compliance with Section 7.04(c) shall be permitted;

(e) (i) Investments in existence on the Second Amendment Effective Date and listed on Schedule 7.05 and any intercompany Investments outstanding on the Second Amendment Effective Date shall be permitted and (ii) any modification, replacement, renewal or extension of the foregoing; provided that the amount of the original Investment is not increased except by the terms of such Investment or as otherwise permitted by this Section 7.05;

(f) Investments made by the Company in or to any Restricted Subsidiary and made by any Restricted Subsidiary in or to the Company or any other Restricted Subsidiary and Guarantees by the Company or any Restricted Subsidiary of obligations of any other Restricted Subsidiary, provided that the amount of any Investment (i) by a Domestic Credit Party to a Foreign Subsidiary, (ii) by a Foreign Borrower to a Non-Credit Party, (iii) constituting a Guarantee by a Domestic Credit Party of obligations of any Foreign Subsidiary and (iv) constituting a Guarantee by a Foreign Borrower of obligations of any Non-Credit Party shall not exceed in the aggregate the greater of \$390,000,000 and 10.50% of Consolidated Total Assets at any time outstanding; provided, further that any unsecured Guarantees by the Company of any Indebtedness of Foreign Subsidiaries permitted under Section 7.04 shall be excluded from the calculation of the basket in the foregoing proviso;

(g) loans and advances by the Company and its Restricted Subsidiaries to officers and employees of the Company and its Restricted Subsidiaries, in each case incurred in the ordinary course of business, in an aggregate outstanding principal amount not to exceed

\$10,000,000 at any time (determined without regard to any write-downs or write-offs of such loans and advances) shall be permitted;

(h) (i) the Company and the Domestic Credit Parties may make equity contributions to their respective direct wholly-owned Restricted Subsidiaries which are Domestic Credit Parties and (ii) the Foreign Borrowers may make equity contributions to their respective direct wholly-owned Restricted Subsidiaries which are Credit Parties;

(i) Permitted Acquisitions shall be permitted;

(j) the Company and its Restricted Subsidiaries may own the Equity Interests of their respective Restricted Subsidiaries in existence on the Closing Date or thereafter created or acquired in accordance with the terms of this Agreement;

(k) any Investments in any Subsidiary in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(l) the Company and its Restricted Subsidiaries may acquire and hold non-cash consideration issued by the purchaser of assets in connection with a sale of such assets to the extent permitted by Section 7.02(e);

(m) the Company and its Restricted Subsidiaries may enter into Other Hedging Agreements in the ordinary course of business providing protection against fluctuations in currency values in connection with the operations of the Company or any of its Restricted Subsidiaries, so long as management of the Company or such Restricted Subsidiary, as the case may be, has determined in good faith that the entering into of such Other Hedging Agreements are bona fide hedging activities and are not for speculative purposes;

(n) so long as no Event of Default exists or would exist immediately after giving effect to the respective Investment, the Company and its Restricted Subsidiaries shall be permitted to make Investments in any Joint Venture and any Unrestricted Subsidiary on any date in an amount not to exceed the Available JV Basket Amount on such date (after giving effect to all prior and contemporaneous adjustments thereto, except as a result of such Investment), it being understood and agreed that to the extent the Company or one or more other Restricted Subsidiaries (after the respective Investment has been made) receives a cash return from the respective Joint Venture or Unrestricted Subsidiary, as applicable, of amounts previously invested pursuant to this clause (n) after the Closing Date (which cash return may be made by way of repayment of principal in the case of loans and cash equity returns (whether as a distribution, dividend or redemption) in the case of equity investments) or a return in the form of an asset distribution from the respective Joint Venture or Unrestricted Subsidiary, as applicable, of any asset previously contributed pursuant to this clause (n) after the Closing Date, then the amount of such cash return of investment or the fair market value of such distributed asset (as determined in good faith by senior management of the Company), as the case may be, shall apply to increase the Available JV Basket Amount; provided that, the aggregate amount of increases to the Available JV Basket Amount described above shall not exceed the amount of returned Investment and in no event, shall the amount of the increases made to the Available JV Basket Amount in respect of any Investment exceed the amount previously invested pursuant to this clause (n) after the Closing Date;

(o) the Company and its Restricted Subsidiaries may (i) make Investments consisting of forward purchases of commodities used in a Permitted Business in connection with the hedging of prices of such commodities and (ii) purchase options to buy commodities used in a Permitted Business, and purchase and sell options to purchase commodities used in a Permitted Business, in each case in connection with the hedging of prices of such commodities; provided that (x) the aggregate amount of such forward purchases of any such commodity and option purchases in respect of any such commodity shall at no time exceed 75% of the estimated purchases by the Company and its Restricted Subsidiaries of the respective commodity subject thereto over a two year period following each date on which an Investment is made pursuant to

this Section 7.05(o) and (y) management of the Company shall have determined in good faith that such forward and/or option purchases are bona fide hedging activities and not for speculative purposes;

(p) the Company and its Restricted Subsidiaries may make additional Investments in an aggregate not to exceed the Available Amount, so long as (i) no Event of Default is continuing or would result therefrom and (ii) the Company is in compliance with the covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to such Investment;

(q) the Company and its Restricted Subsidiaries may make Investments not otherwise permitted by this Section 7.05 in an aggregate amount not to exceed the greater of (i) \$200,000,000 and (ii) 5.25% of Consolidated Total Assets;

(r) Guarantees permitted by Section 7.04 (other than Section 7.04(i)) and transactions permitted by Section 7.02 (other than Section 7.02(c)), in each case to the extent constituting Investments;

(s) Investments in the ordinary course of business consisting of Article 3 endorsements for collection or deposit;

(t) the Company or any of its Restricted Subsidiaries may make advances in the form of a prepayment of expenses to vendors, suppliers and trade creditors, so long as such expenses were incurred in the ordinary course of business, and consistent with the past practices as in effect on the Closing Date;

(u) Investments in the form of industrial revenue bonds (or similar instruments) acquired in connection with IRB Sale-Leaseback Transactions; provided that the Administrative Agent shall have a perfected first-priority security interest in such industrial revenue bonds (or similar instruments) and the rights related thereto pursuant to the relevant Collateral Documents;

(v) Investments made by any Non-Credit Party to the extent such Investments are financed with the proceeds received by such Non-Credit Party from an Investment in such Non-Credit Party permitted under Section 7.05(f);

(w) the Company may use the proceeds of Incremental Term Loans in an aggregate amount not to exceed \$214,500,000 to make intercompany loans and advances to its wholly-owned Foreign Subsidiaries (directly or indirectly);

(x) Investments in any Restricted Subsidiary in connection with the Corporate Restructuring;

(y) advances or extensions of trade credit in the ordinary course of business;

(z) the Company and the Restricted Subsidiaries may make Investments using the net proceeds actually received by the Company from and after the Closing Date from the sale of Equity Interests of the Company (other than (i) Disqualified Preferred Stock, (ii) Equity Interests issued or sold to a Restricted Subsidiary or an employee stock ownership plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination and (iii) Equity Interests the net proceeds of which are used to repay long-term Indebtedness for borrowed money (other than revolving loans));

(aa) advances of payroll payments to employees in the ordinary course of business;

(bb) Guarantees by the Company and the Restricted Subsidiaries of leases of the Company and Restricted Subsidiaries (other than Capitalized Lease Obligations) or of other obligations not constituting Indebtedness, in each case entered into in the ordinary course of business and payments thereon or Investments in respect thereof in lieu of such payments;

(cc) (i) Investments held by any Restricted Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with the Company or any Restricted Subsidiary after the Closing Date, in each case as part of an Investment otherwise permitted by this Section 7.05 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of the relevant acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 7.05(cc) so long as no such modification, replacement, renewal or extension thereof increases the amount of such Investment except as otherwise permitted by this Section 7.05;

(dd) Investments in any Receivables Subsidiary consisting of (i) the contributions of accounts receivable (and rights ancillary thereto) to the extent required or made pursuant to a Receivables Facility or a Foreign Receivables Facility and (ii) loans or advances to such Receivables Subsidiary for the purchase price of accounts receivable (and rights ancillary thereto) pursuant to a Receivables Facility or a Foreign Receivables Facility, in each case, so long as any applicable Receivables Facilities Indebtedness or Foreign Receivable Indebtedness arising from such Receivables Facility or Foreign Receivables Facility, respectively, is permitted pursuant to Section 7.04; and

(ee) the Company and its Restricted Subsidiaries may make Investments not otherwise permitted under this Section 7.05, so long as (i) no Event of Default shall have occurred and be continuing at the time such Indebtedness is incurred, (ii) the Company shall be in compliance with the financial covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to the incurrence of any such Investment and (ii) either (x) the Consolidated Total Net Leverage Ratio shall be less than 2.75 to 1.00 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to the incurrence of any such Investment or (y) the non-credit-enhanced, senior secured long-term debt rating of the credit facilities under this Agreement shall be rated as least Baa3 by Moody's and BBB- by S&P.

For purposes of compliance with this Section 7.05, the amount of any Investment shall be the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any returns or distributions of capital or repayment of principal actually received in cash by such other Person with respect thereto (but only to the extent that the aggregate amount of all such returns, distributions and repayments with respect to such Investment does not exceed the principal amount of such Investment and less any such amount which increases the Available Amount or the Available JV Basket Amount).

Any Investment that exceeds the limits of any particular clause set forth above may be allocated amongst more than one of such clauses to permit the incurrence of holding of such Investment to the extent such excess is permitted as an Investment under such other clauses.

**7.06 Dividends.** The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Dividends (other than Dividends payable solely in common stock of the Company or any such Restricted Subsidiary, as the case may be) or make any payments in respect of any outstanding Shareholder Subordinated Notes, except that:

(a) (x) any Restricted Subsidiary may pay Dividends to the Company or any wholly-owned Restricted Subsidiary and (y) any non-wholly-owned Restricted Subsidiary may pay cash Dividends to its shareholders generally so long as the Company or its respective

Restricted Subsidiary which owns the Equity Interest in the Restricted Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holding of the Equity Interest in the Restricted Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests of such Restricted Subsidiary);

(b) the Company may redeem or purchase shares of Company common stock or options to purchase Company common stock, as the case may be, held by former officers or employees of the Company or any of its Restricted Subsidiaries (or corporations owned by former officers or employees) following the termination of their employment and may make payments to former officers or employees of the Company or any of its Restricted Subsidiaries in respect of certain tax liabilities arising from the exercise of options to purchase Company common stock; provided that (i) the only consideration paid by the Company in respect of such redemptions, purchases and/or payments shall be cash and Shareholder Subordinated Notes and (ii) the sum of (A) the aggregate amount paid by the Company in cash in respect of all such redemptions, purchases and payments plus (B) the aggregate amount of all cash payments made on all Shareholder Subordinated Notes shall not exceed \$15,000,000 in any fiscal year of the Company; provided that in the event that the amount of cash permitted to be spent pursuant to this clause (ii) in any fiscal year of the Company (before giving effect to any increase in such permitted amount pursuant to this proviso) is greater than the amount of cash actually expended by the Company and its Restricted Subsidiaries during any fiscal year of the Company, 100% of such excess may be carried forward and used to make cash redemptions and repurchases of Company common stock and/or cash payments on Shareholder Subordinated Notes in the immediately succeeding fiscal year of the Company; provided further that no amount once carried forward pursuant to the immediately preceding proviso may be carried forward to any fiscal year thereafter and such amounts carried forward in any fiscal year may only be utilized after the Company has spent its full \$15,000,000 allotment for such cash redemptions, repurchases or payments in such fiscal year of the Company; provided further that notwithstanding the foregoing provisions of this Section 7.06(b) (but subject to following clause (C)) the Company may redeem or repurchase shares of Company common stock owned by former officers or employees of the Company or any of its Restricted Subsidiaries upon the death or permanent disability of such officer or employee with cash in excess of amounts permitted above in this clause (ii) not to exceed \$15,000,000 in any fiscal year of the Company and with the proceeds of any key man life insurance carried by the Company and/or its Restricted Subsidiaries in respect of such deceased or permanently disabled officer or employee and (C) at the time of any cash payment permitted to be made pursuant to this Section 7.06(b), no Default or Event of Default shall then exist or result therefrom;

(c) repurchases of capital stock of the Company deemed to occur upon the exercise of stock options if such capital stock represents a portion of the exercise price thereof and so long as no cash is otherwise paid or distributed by the Company or any of its Restricted Subsidiaries in connection therewith;

(d) the Company may pay Dividends on its Qualified Preferred Stock solely through the issuance of additional shares of Qualified Preferred Stock and not in cash;

(e) the Company may effect additional Dividends in an aggregate amount not to exceed the Available Amount then in effect, so long as (x) no Default or Event of Default is continuing or would result therefrom and (y) the Company shall be in compliance with the covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to such Dividend;

(f) the Company may make Dividends, so long as (i) no Default or Event of Default then exists or would exist after giving effect to the respective Dividend, (ii) the Company shall be in compliance with the covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to such Dividend and (iii) the aggregate amount of all Dividends paid in reliance on this clause (f) on and after the Third

Amendment Effective Date shall not exceed, in any fiscal year of the Company, the greater of (A) \$200,000,000 and (B) 5.25% of Consolidated Total Assets; provided that, to the extent capacity under the preceding clause (iii) is not utilized to make Dividends in any calendar year, such unutilized amounts shall carry forward and may be utilized by the Company to declare and pay Dividends in the immediately succeeding calendar year (after utilization of all capacity under clause (iii) for such succeeding calendar year);

(g) the Company may make Dividends in the form of the issuance of additional capital stock to effectuate the Shareholders' Rights Plan, so long as no Change in Control would result therefrom;

(h) the Company and any of its Restricted Subsidiaries may purchase or acquire Equity Interests of another Person constituting an Investment, to the extent such Investment is permitted pursuant to Section 7.05;

(i) the Company may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its Equity Interests;

(j) repurchases by the Company of partial interests in its Equity Interests for nominal amounts which are required to be repurchased in connection with the exercise of stock options or warrants to permit the issuance of only whole shares of Equity Interests;

(k) the repurchase of Equity Interests of the Company that occurs upon the cashless exercise of stock options, warrants or other convertible securities as a result of the Company accepting such options, warrants or other convertible securities as satisfaction of the exercise price of such Equity Interests or in connection with the satisfaction of withholding tax obligations;

(l) the Company and any Restricted Subsidiary may pay cash payments in lieu of fractional shares in connection with (i) any dividend, split or combination of its Equity Interests or any Permitted Acquisition (or similar Investment) or (ii) the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Company or any of its Restricted Subsidiaries;

(m) the Company may make Dividends in an aggregate amount not to exceed the aggregate amount of net cash proceeds received from sales or issuances of Equity Interests of the Company after the Closing Date (other than (i) Disqualified Preferred Stock, (ii) Equity Interests issued or sold to a Restricted Subsidiary or an employee stock ownership plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination and (iii) Equity Interests the net proceeds of which are used to repay long-term Indebtedness for borrowed money (other than revolving loans)); and

(n) the Company may make other Dividends, so long as (i) no Default or Event of Default then exists or would exist after giving effect to the respective Dividend, (ii) the Company shall be in compliance with the covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to such Dividend and (iii) either (x) the Consolidated Total Net Leverage Ratio shall be less than 2.75 to 1.00 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b), determined on a Pro Forma Basis after giving effect to the incurrence of such Dividend or (y) the non-credit-enhanced, senior secured long-term debt rating of the credit facilities under this Agreement shall be rated as least Baa3 by Moody's and BBB- by S&P.

**7.07 Transactions with Affiliates.** The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any transaction or series of transactions with any Affiliate of the

Company or any of its Restricted Subsidiaries involving aggregate payment for any such transaction or series of transactions in excess of \$5,000,000 other than on terms and conditions substantially as favorable to the Company or such Restricted Subsidiary as would be reasonably expected to be obtainable by the Company or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate; provided that the following shall in any event be permitted: (i) the Transaction; (ii) intercompany transactions among the Company and its Restricted Subsidiaries permitted by this Agreement shall be permitted (including the payment of interest and principal on intercompany Indebtedness permitted by Section 7.04); (iii) the payment of consulting or other fees to the Company by any of its Restricted Subsidiaries in the ordinary course of business; (iv) the payment of reasonable and customary fees and expenses, and the provision of customary indemnification to directors, officers, employees, members of management and consultants of the Company and the Restricted Subsidiaries; (v) employment and severance arrangements (including options to purchase Equity Interests of the Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits plans) between the Company and any Restricted Subsidiary and their directors, officers, employees, members of management and consultants in the ordinary course of business; (vi) Dividends may be paid by the Company to the extent permitted by Section 7.06; (vii) payments may be made pursuant to any Tax Allocation Agreement; (viii) the Company and its Restricted Subsidiaries may enter into transactions with employees and/or officers of the Company and its Restricted Subsidiaries in the ordinary course of business; (ix) any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by or merged into the Company 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 Company when taken as a whole as compared to such agreement as in effect on the date of such acquisition or merger); (x) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by the Company and the Restricted Subsidiaries in such joint venture), non-wholly owned Subsidiaries and Unrestricted Subsidiaries in the ordinary course of business to the extent otherwise permitted under Section 7.05; (xi) transactions undertaken in good faith (as certified by an Authorized Officer of the Company) for the purpose of improving the consolidated Tax efficiency of the Company and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement; (xii) any transactions in connection with the Corporate Restructuring; (xiii) any customary transaction with (including any Investment in or relating to) any Receivables Subsidiary effected as part of any Receivables Facility or any Foreign Receivables Facility; and (xiv) any other transaction with an Affiliate, which is approved by a majority of disinterested members of the board of directors (or equivalent governing body) of the Company in good faith.

**7.08 Consolidated Interest Coverage Ratio.** Commencing with the fiscal quarter ending October 1, 2017, the Company will not permit the Consolidated Interest Coverage Ratio at the end of each fiscal quarter of the Company to be less than 3.00 to 1.00.

**7.09 Consolidated Total Net Leverage Ratio.** The Company will not permit the Consolidated Total Net Leverage Ratio (i) on the last day of any fiscal quarter of the Company ending during the period from the Third Amendment Effective Date to and including the date that is the last day of the second fiscal quarter of the Company's 2024 fiscal year to be greater than 4.25 to 1.00 and (ii) on the last day of any fiscal quarter of the Company ending thereafter to be greater than 4.00 to 1.00; provided, that for each of the four (4) fiscal quarters immediately following a Qualified Acquisition, commencing with the fiscal quarter in which such Qualified Acquisition was consummated (such period of increase, the "Leverage Increase Period"), the required ratio set forth above shall be increased to 4.50 to 1.00; provided, further that (A) there shall only be two (2) Leverage Increase Periods during the term of this Agreement and (B) the maximum Consolidated Total Net Leverage Ratio shall revert to the otherwise applicable ratio set forth in this Section 7.09 at the end of such four (4) fiscal quarter period.

**7.10 Limitation on Voluntary Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; Issuances of Capital Stock, Etc.** The Company will not, and will not permit any of its Restricted Subsidiaries to:

(a) amend or modify, or permit the amendment or modification of, any provision of any Qualified Preferred Stock (including, without limitation, a certificate of designation) in a

manner that is inconsistent with the requirements therefor set forth in the definition "Qualified Preferred Stock" or that could reasonably be expected to be adverse in any material respect to the interests of the Lenders;

(b) make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption, repurchase or acquisition for value of (including, without limitation, by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due), or any prepayment or redemption (except as expressly required under the terms of the relevant agreement) as a result of any asset sale, change of control or similar event, of any Indebtedness pursuant to, after the incurrence or issuance thereof, any Shareholder Subordinated Note (except to the extent expressly permitted under Section 7.06(b)) or any Qualified Preferred Stock (except to the extent permitted by Section 7.06); provided that shares of Qualified Preferred Stock may be converted into shares of Company common stock in accordance with the certificate of designation governing the same;

(c) amend, modify or change in a way adverse to the interests of the Lenders in any material respect any Tax Allocation Agreement, its certificate of incorporation (including, without limitation, by the filing or modification of any certificate of designation other than any certificates of designation relating to Qualified Preferred Stock issued as permitted herein), by-laws, certificate of partnership, partnership agreement, certificate of limited liability company, limited liability company agreement or any agreement entered into by it, with respect to its capital stock or other Equity Interests, or enter into any new Tax Allocation Agreement or agreement with respect to its capital stock or other Equity Interests which could reasonably be expected to be adverse in any material respect to the interests of the Lenders; provided that the foregoing clause shall not restrict (x) the ability of the Company and its Restricted Subsidiaries to amend their respective certificates of incorporation to authorize the issuance of capital stock otherwise permitted to be issued pursuant to the terms of this Agreement, (y) the ability of the Company to enter into, amend or otherwise modify the Shareholders' Rights Plan or (z) the ability of the Company to amend its organizational documents to adopt customary takeover defenses for a public company, such as classification of its board of directors, requirements for notice of acquisition of shares and other similar measures;

(d) make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption, repurchase, conversion or acquisition for value of (including, without limitation, by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due), or any prepayment, repurchase, redemption, conversion or other acquisition for value as a result of any asset sale, change of control or other required "repurchase" event prior to final stated maturity (any such payment, prepayment, redemption, repurchase, conversion or other acquisition, a "Debt Repurchase"), of any Junior Debt or any Permitted Refinancing Indebtedness in respect thereof; provided that the Company and its Restricted Subsidiaries may at any time effect a Debt Repurchase thereof, so long as (x) immediately before and after such Debt Repurchase, the Company shall be in compliance, on a Pro Forma Basis, with the covenants contained in Sections 7.08 and 7.09 as of the most recent fiscal quarter end for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b) prior to the date of such Debt Repurchase, and (y) no Event of Default shall have occurred or be continuing; or

(e) amend, modify or change any provision of any Junior Debt or any Permitted Refinancing Debt Documents governing Permitted Refinancing Indebtedness in respect of Junior Debt in a manner adverse to the interests of the Lenders in any material respect; provided that in no event shall any such amendment, modification or change shorten the maturity or average life to maturity of any Junior Debt or Permitted Refinancing Indebtedness in respect thereof or require any payment with respect thereto sooner than previously scheduled.

**7.11 Limitations on Certain Restrictions on Subsidiaries.** The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective, any encumbrance or restriction on the ability of any such Restricted Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other Equity

Interest owned by the Company or any Restricted Subsidiary, or pay any Indebtedness owed to the Company or a Restricted Subsidiary, (b) make loans or advances to the Company or any Restricted Subsidiary or (c) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries, except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) this Agreement, the other Loan Documents or any document governing any Swap Agreement, Refinancing Notes, Refinancing Junior Loans, Incremental Equivalent Debt or any Permitted Refinancing Indebtedness in respect thereof, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Company or a Restricted Subsidiary, (iv) customary provisions restricting assignment of any contract entered into by the Company or any Restricted Subsidiary in the ordinary course of business, (v) any agreement or instrument governing Permitted Acquired Debt, 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 acquired pursuant to the respective Permitted Acquisition and so long as the respective encumbrances or restrictions were not created (or made more restrictive) in connection with or in anticipation of the respective Permitted Acquisition, (vi) customary provisions contained in joint venture agreements and other similar agreements applicable to joint ventures not prohibited by this Agreement, (vii) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (viii) the Foreign Receivables Facilities, the Receivables Facilities and the documentation governing the foregoing, (ix) customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary or assets pending such sale; provided such restrictions and conditions apply only to the Restricted Subsidiary or assets being sold and such sale is permitted hereunder, (x) restrictions and conditions on any Foreign Subsidiary imposed by the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred pursuant to Section 7.04, (xi) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or the Persons obligated thereon, (xii) clause (c) above shall not apply to restrictions or conditions imposed by restrictions on cash and other deposits or net worth provisions in leases and other agreements entered into in the ordinary course of business, (xiii) clause (a) above shall not apply to provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Equity Interests of a Person other than on a pro rata basis, (xiv) restrictions contained in agreements and instruments governing Indebtedness permitted pursuant to Section 7.04(b), (d), (f), (g), (i), (n), (p), (r), (s), (t), (w), (x), (y) and (ff) to the extent not materially more restrictive, taken as a whole, to the Company and its Subsidiaries than the covenants contained in this Agreement (as reasonably determined by the Company in good faith) and (xv) restrictions and conditions imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of any contract, instrument or obligation referred to in clauses (i) through (xiv) above; provided that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Company, no more restrictive with respect to such restrictions taken as a whole than those in existence prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

**7.12 Sanctions.** No Credit Party shall, nor shall any Credit Party permit any Subsidiary to directly or knowingly indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the target of Sanctions, in each case, in violation of applicable Sanctions, or, to the knowledge of any Credit Party, in any other manner that will result in a violation by the Company or any of its Subsidiaries or any Lender, Arranger, Sustainability Coordinator, Administrative Agent, L/C Issuer, Swing Line Lender or Swap Provider of Sanctions.

**7.13 Anti-Corruption Laws.** No Credit Party shall, nor will any Credit Party permit any Subsidiary to directly or, to the knowledge of any Credit Party, indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or other similar anti-corruption legislation in other jurisdictions with authority or jurisdiction over the Company or its Subsidiaries.

**7.14 Canadian Defined Benefit Pension Plan.** No Credit Party shall maintain, contribute to, or incur any liability or contingent liability in respect of a Canadian Defined Benefit Pension Plan.

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

- (a) The Company or the applicable Borrower shall fail to pay when and as required to be paid herein, and in the currency required herein, any principal of any Loan or any L/C Obligation;
- (b) the Company or the applicable Borrower shall fail to pay any interest on any Loan or on any L/C Obligation or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied thereafter for a period of three Business Days;
- (c) any representation or warranty made or deemed made in writing by or on behalf of any Borrower or any Restricted Subsidiary in or in connection with this Agreement, in any other Loan Document, or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been untrue or incorrect in any material respect when made or deemed made;
- (d) any Credit Party shall default in the due performance or observance by it of any term, covenant or agreement contained in Section 6.01(e)(i), 6.05 (with respect to the Company's existence) or Article VII;
- (e) any Credit Party or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b), (c) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after (i) any officer of any Borrower becomes aware thereof, or (ii) notice thereof from the Administrative Agent to the Company (which notice will be given at the request of any Lender);
- (f) (i) the Company or any of its Restricted Subsidiaries shall (x) default in any payment with respect to any Indebtedness (other than the Obligations) with an aggregate principal amount in excess of \$75,000,000 beyond the period of grace, if any, provided in the instrument or agreement under which Indebtedness was created or (y) default (or any similar term) in the observance or performance of any agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, the effect of which default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (after the period of grace, if any, and with the giving of any notice that tolls a grace period, if required), any such Indebtedness to become due prior to its stated maturity (it being understood that a default described above in this clause (y) shall cease to constitute an Event of Default if and when same has been cured or otherwise ceases to exist, in each case prior to the taking of any action by the Administrative Agent or the Required Lenders pursuant to the last paragraph of this Section 8.01); or (ii) any Indebtedness (other than the Obligations) with an aggregate principal amount in excess of \$75,000,000 of the Company or any of its Restricted Subsidiaries shall be declared to be due and payable, or shall be required to be prepaid as a result of a default thereunder or an event of the type that constitutes an Event of Default, in each case, prior to the stated maturity thereof; provided that, that this Section 8.01 shall not apply to (i) secured Indebtedness that becomes due solely as a result of the voluntary sale or transfer of the property or assets (to the extent not prohibited under this Agreement) securing such Indebtedness, (ii) Guarantees of Indebtedness that are satisfied promptly on demand or (iii) with respect to Indebtedness incurred under any Swap Agreement, termination events or equivalent events pursuant to the terms of the relevant Swap Agreement which are not the result of any default thereunder by any Credit Party or any Restricted Subsidiary;

(g) the Company or any of its Material Subsidiaries shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code") or under any other Debtor Relief Law; or an involuntary case is commenced against the Company or any of its Material Subsidiaries and the petition is not controverted within 20 days, or is not dismissed within 90 days, after commencement of the case; or a custodian (as defined in the Bankruptcy Code), trustee, receiver or receiver-manager is appointed for, or takes charge of, all or substantially all of the property of the Company or any of its Material Subsidiaries; or the Company or any of its Material Subsidiaries commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Company or any of its Material Subsidiaries; or the Company or any of its Material Subsidiaries makes a proposal to its creditors or files notice of its intention to do so, institutes any other proceeding under applicable Law seeking to adjudicate it a bankrupt or an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors, composition of it or its debts or any other similar relief; or there is commenced against the Company or any of its Material Subsidiaries any such proceeding which remains undismissed for a period of 90 days; or the Company or any of its Material Subsidiaries is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or the Company or any of its Material Subsidiaries suffers any appointment of any custodian, trustee, receiver or receiver-manager or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 90 days; or the Company or any of its Material Subsidiaries makes a general assignment for the benefit of creditors; or any corporate action is taken by the Company or any of its Material Subsidiaries for the purpose of effecting any of the foregoing;

(h) an ERISA Event shall occur which results or could reasonably be expected to have a Material Adverse Effect;

(i) one or more judgments or decrees shall be entered against the Company or any of its Restricted Subsidiaries involving a liability (to the extent not paid or covered by insurance (with any portion of any judgment or decree not so covered to be included in any determination hereunder)) in excess of \$75,000,000 for all such judgments and decrees and all such judgments or decrees shall not have been paid in full, vacated, discharged or stayed or bonded pending appeal within 60 days of the entry thereof;

(j) a Change in Control shall occur; or

(k) any provision of any Loan Document, at any time after its execution and delivery and for any reason other than in accordance with the terms of such Loan Document or satisfaction in full of all the Obligations, ceases to be in full force and effect or ceases to give the Administrative Agent any material part of the Liens purported to be created thereby; or any Credit Party contests in any manner the validity or enforceability of any provision of any Loan Document; or any Credit Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any Loan Document;

**Article XL** then, and in every such event (other than an event with respect to any Borrower described in clause (g) of this Section), and at any time thereafter during the continuance of such event, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, by notice to the Company, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare all Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each of the Borrowers, (iii) require that the Company Cash Collateralize the L/C Obligations (in an amount equal to

the Minimum Collateral Amount) and (iv) exercise on behalf of itself, the Lenders all rights and remedies available to it, the Lenders under the Loan Documents; and in case of any event with respect to any Borrower described in clause (g) of this Section, the Commitments shall automatically terminate and the principal of all Loans then outstanding, together with accrued interest thereon and all fees and other Obligations accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each of the Borrowers, and the obligation of the Company to Cash Collateralize the L/C Obligations as aforesaid shall become effective, in each case without further act of the Administrative Agent or any Lender.

**8.02 Application of Funds.** After the exercise of remedies provided for in Section 8.01 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically be required to be Cash Collateralized as set forth in the last paragraph of Section 8.01), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.14 and 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent to the extent payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations arising under the Loan Documents constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer to the extent payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to (a) payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings, Obligations then owing under Secured Swap Agreements and Obligations then owing under any Secured Cash Management Agreements and (b) Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the Lenders, the Swap Providers and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Company or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Credit Party shall not be paid with amounts received from such Credit Party or such Credit Party's assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Swap Agreements and Secured Cash Management Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Swap Provider or Cash Management Bank, as the case may be (unless such Cash Management Bank or Swap Provider is the Administrative Agent or an Affiliate thereof). Each Swap Provider and Cash Management Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such

notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a “Lender” party hereto.

## **ARTICLE IX ADMINISTRATIVE AGENT**

**9.01 Appointment and Authority.** Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof (including entering into any Market Intercreditor Agreement) together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and the Company shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (in its capacities as a Lender, Swing Line Lender (if applicable), potential Swap Provider and potential Cash Management Banks) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral, together with such powers and discretion as are reasonably incidental thereto (including entering into Market Intercreditor Agreement). In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**9.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Company or any Restricted Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

### **9.03 Exculpatory Provisions.**

(a) Neither the Administrative Agent, any Arranger, or the Sustainability Coordinator, as applicable, shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent, any Arranger, or the Sustainability Coordinator, as applicable, and its Related Parties:

- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated

hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or the L/C Issuer any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Credit Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, any Arranger, the Sustainability Coordinator or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.01 or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Company, a Lender or the L/C Issuer.

(c) Neither the Administrative Agent nor any of its Related Parties shall have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) Neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. 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 prospective Lender is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment of Loans, or disclosure of confidential information, to any Disqualified Institution.

#### **9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any

statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance, extension, renewal or increase of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Credit Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with, so long as no Specified Event of Default exists, the consent of the Company (such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided, that, in no event shall any successor Administrative Agent be a Defaulting Lender or a Disqualified Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Company and such Person remove such Person as Administrative Agent and, with, so long as no Specified Event of Default exists, the consent of the Company (such consent not to be unreasonably withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to

be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g)) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Company to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Company of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender) and acceptance by such Lender of such appointment, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**9.07 Non-Reliance on Administrative Agent, Arrangers, Sustainability Coordinator, and Other Lenders.** Each of the Lenders and the L/C Issuer expressly acknowledges that neither the Administrative Agent, any Arranger, nor the Sustainability Coordinator has made any representation or warranty to it, and that no act by the Administrative Agent, any Arranger or the Sustainability Coordinator hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Credit Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent, any Arranger, or the Sustainability Coordinator to any Lender or the L/C Issuer as to any matter, including whether the Administrative Agent, any Arranger, or the Sustainability Coordinator has disclosed material information in such Person's (or its Related Parties') possession. Each of the Lenders and the L/C Issuer represents to the Administrative Agent, the Arrangers, and the Sustainability Coordinator that it has, independently and without reliance upon the Administrative Agent, any Arranger, the Sustainability Coordinator, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their Subsidiaries, and all

applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each of the Lenders and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, the Sustainability Coordinator, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, 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 Credit Parties. Each of the Lenders and the L/C Issuer represents and warrants that (a) the Loan Documents set forth the terms of a commercial lending facility and (b) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or the L/C Issuer, as applicable, for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or the L/C Issuer, as applicable, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each of the Lenders and the L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each of the Lenders and the L/C Issuer 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 or the L/C Issuer, as applicable, 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.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Arrangers, syndication agents, documentation agents, or senior managing agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

**Article XLI** and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization,

arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The holders of the Obligations hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Credit Party is subject, or (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the holders thereof shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.01, and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Lender or any acquisition vehicle to take any further action.

**9.10 Collateral and Guaranty Matters.** Without limiting the provisions of Section 9.09, each of the Lenders (including in its capacity as a potential Swap Provider and a potential Cash Management Bank) and the L/C Issuer 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) if the Obligations have been paid-in-full (other than any Obligations pursuant to any Secured Swap Agreement or Secured Cash Management Agreement or contingent and other obligations not then due and owing) and the Commitments have terminated, (ii) that is transferred, sold or otherwise disposed of as part of or in connection with any transfer, sale or other disposition permitted hereunder or under any other Loan Document or any Recovery Event, (iii) as permitted by Section 6.10(d) or (iv) as otherwise approved in accordance with Section 10.01;
- (b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02;
- (c) to release any Guarantor from its obligations under the Guaranty if (x) such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted under the Loan Documents or (y) such Guarantor becomes an Excluded Subsidiary; and
- (d) to enter into and perform its obligations under any Market Intercreditor Agreement.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty, pursuant to this Section 9.10. The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**9.11 Secured Swap Agreements and Secured Cash Management Agreements.** No Swap Provider or Cash Management Bank that obtains the benefit of Section 8.02, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of any Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Swap Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Swap Provider or Cash Management Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Swap Agreements and Secured Cash Management Agreements in the case of the Maturity Date or if the Obligations (other than Obligations under Secured Swap Agreements and Secured Cash Management Agreements) have been paid-in-full (other than contingent and other obligations not then due and owing).

**9.12 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 any Borrower or any other Credit 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 sub-sections (b) through (g) of Part I of PTE 84–14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84–14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (i) Section 9.12(a)(i) is true with respect to a Lender or (ii) a Lender has provided another representation, warranty and covenant in accordance with Section 9.12(a)(iv), 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 any Borrower or any other Credit 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 other Loan Document or any documents related hereto or thereto).

### **9.13 Recovery of Erroneous Payments.**

**Article XLII** Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender Party, whether or not in respect of an Obligation due and owing by any Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Party in Same Day Funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at a rate per annum equal to the Overnight Rate. To the extent permitted by applicable law, each Lender Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Party promptly upon determining that any payment made to such Lender Party comprised, in whole or in part, a Rescindable Amount.

## **ARTICLE X MISCELLANEOUS**

### **10.01 Amendments, Etc.**

**Article XLIII** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Credit Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Company or the applicable Credit Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.01) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding any mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) if the effect of such amendment is to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(d) change (i) Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby or (ii) Section 8.02, in each case, without the written consent of each Lender directly and adversely affected thereby;

(e) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(f) release the Company from its obligations under the Loan Documents or all or substantially all of the value of the Guaranty, without the written consent of each Lender, except, with respect to the Guaranty, to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(g) release all or substantially all of the Collateral under all the Collateral Documents without the written consent of each Lender except to the extent the release of any Collateral is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone) or amend the definition of "Collateral Release Period" without the written consent of each Lender; or

(h) amend Section 1.06 or, except as otherwise set forth in this Section 10.01, the definition of "Alternative Currency" without the written consent of each Revolving A Lender and L/C Issuer obligated to make Credit Extensions in Alternative Currencies;

**Article XLIV** provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document, (ii) unless also signed by the L/C Issuer, no amendment, waiver or consent shall affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (iii) unless also signed by the Swing Line Lender, no amendment, waiver or consent shall affect the rights or duties of the Swing Line Lender under this Agreement; (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (v) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (vi) in order to implement any additional Commitments and/or any Incremental Term Loan, in each case, in accordance with Section 2.18, this Agreement and the other Loan Documents may be amended for such purpose (but solely to the extent necessary to implement such additional Commitments and/or such Incremental Term Loan and otherwise in accordance with Section 2.18) by the Credit Parties, the Administrative Agent and each Lender providing a such additional Commitments and/or such Incremental Term Loan; (vii) in order to implement any Specified Refinancing Term Loan, this Agreement and the other Loan Documents may be amended pursuant to a Refinancing Amendment in accordance with Section 2.17 with only the consent of the Credit Parties, the Administrative Agent and the Lenders providing such Specified Refinancing Term Loan; (viii) in order to implement any release or reinstatement of Liens as contemplated by Section 6.10(f), this Agreement and the other Loan Documents may be amended in accordance with Section

6.10(f) with only the consent of the Credit Parties and the Administrative Agent; (ix) in connection with the addition of any Designated Borrowers pursuant to Section 2.16, this Agreement and the other Loan Documents may be amended to reflect the addition of such Designated Borrower with only the consent of the Credit Parties, the Administrative Agent and the Lenders lending to such Designated Borrower; (x) in order to implement any Extension, this Agreement and the other Loan Documents may be amended in accordance with Section 2.19 with only the consent of the Credit Parties, the Administrative Agent and each applicable extending Lender; (xi) this Agreement may be amended ~~in accordance with Section 3.03 with only the consent of to implement any Canadian Benchmark Replacement, any Successor Rate, or any Term SOFR Successor Rate, as applicable, as provided in Section 3.03(b), 3.03(c), or 3.03(d), as applicable;~~ (xii) the Administrative Agent ~~and the Company~~ shall have the right, from time to time, to make Term SOFR Conforming Changes, Alternative Currency Conforming Changes, and Canadian Benchmark Replacement Conforming Changes and any amendments implementing such Term SOFR Conforming Changes, such Alternative Currency Conforming Changes, or such Canadian Benchmark Replacement Conforming Changes as applicable, as provided in Section 3.03(b), 3.03(c), or 3.03(d), as applicable; and (xiii) in order to implement any ESG Amendment, this Agreement and the other Loan Documents may be amended in accordance with Section 2.20 with only the consent of the Company and the Sustainability Coordinator.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of such Lender and that has been approved by the Required Lenders, the Company may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Company to be made pursuant to this paragraph).

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent, the L/C Issuer, the Company and the Revolving A Lenders obligated to make Credit Extensions in Alternative Currencies to amend the definition of "Alternative Currency", "Alternative Currency Daily Rate", or "Alternative Currency Term Rate" solely to add additional currency options and the applicable interest rate with respect thereto, in each case, solely to the extent permitted pursuant to Section 1.06.

Notwithstanding any provision herein to the contrary the Administrative Agent and the Company may amend, modify or supplement this Agreement or any other Loan Document to cure or correct administrative errors or omissions, any ambiguity, omission, defect or inconsistency or to effect administrative changes, and such amendment shall become effective without any further consent of any other party to such Loan Document so long as (i) such amendment, modification or supplement does not adversely affect the rights of any Lender or other holder of Obligations in any material respect and (ii) the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment.

Notwithstanding anything to the contrary herein, this Agreement may be amended or amended and restated without the consent of any Lender (but with the consent of the Credit Parties and the Administrative Agent) if, upon giving effect to such amendment or such amendment and restatement, as applicable, such Lender shall no longer be a party to this Agreement (as so amended or amended and restated, as applicable), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

## **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or

electronic email as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company or any other Borrower or the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Company).

**Article XLV** Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e mail, FpML messaging 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 the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, the L/C Issuer or the Company may each, 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.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of such Borrower's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any

other electronic platform or electronic messaging service, or 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 nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Company, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Company, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Company or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Loan Notices, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of a Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Credit Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document (including the imposition of the Default Rate) preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.01 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from

exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.01 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Company agrees (a) to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the development, preparation, negotiation, execution, delivery and syndication of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs; provided that the Company shall only be responsible for the reasonable documented out-of-pocket fees and disbursements of one primary counsel to the Administrative Agent and the Lenders, (and, if reasonably necessary, one regulatory counsel and one local counsel in each jurisdiction the laws of which govern any of the Loan Documents or in which the Company or any of its Subsidiaries is organized or owns property or assets (a “Relevant Jurisdiction”)), and, solely in the case of any actual or potential conflict of interest as determined by the Administrative Agent or Lender affected by such conflict, the Administrative Agent’s or such Lender’s own firm of counsel (and, if reasonably necessary, one regulatory counsel and one local counsel in each Relevant Jurisdiction to such affected Administrative Agent or Lender), (b) to pay or reimburse all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or demand for payment thereunder and (c) to pay or reimburse the Administrative Agent and each Lender for all documented out-of-pocket costs and expenses incurred in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any “workout” or restructuring in respect of the Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law), including all Attorney Costs. The foregoing costs and expenses shall include all search, filing and recording charges and fees and taxes related thereto, and other reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the cost of independent public accountants and other outside experts retained by the Administrative Agent or any Lender.

(b) Indemnification by the Company. The Company shall indemnify and hold harmless the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, reasonable expenses and disbursements (including reasonable Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby (including such Indemnitee’s reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record), (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Company or any of its

Subsidiaries or any Environmental Claim related in any way to the Company or any of its Subsidiaries, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that (x) such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (i) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Parties and (ii) arise from any dispute solely among Indemnitees or its Related Indemnified Parties and (y) the Company shall only be responsible for the reasonable documented out-of-pocket fees and disbursements of one primary counsel to the Indemnitees (and, if reasonably necessary, one regulatory counsel and one local counsel in each Relevant Jurisdiction), and, solely in the case of any actual or potential conflict of interest as determined by any Indemnitee affected by such conflict, such Indemnitee's own firm of counsel (and, if reasonably necessary, one regulatory counsel and one local counsel in each Relevant Jurisdiction to such affected Indemnitee).

(c) Reimbursement by Lenders. To the extent that the Company for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the unused Commitments, Revolving A Exposure, Revolving B Exposure, Outstanding Amount of the Initial Term Loan, Outstanding Amount of the Initial Term A-2 Loan, Outstanding Amount of the Term A-3 Loan and Outstanding Amount of all Incremental Term Loans of such Lender at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party to this Agreement shall assert, and each of them hereby waives on behalf of itself and its Affiliates, and acknowledges that no Person shall have, any claim against any party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds; provided, however, that the foregoing shall not relieve the Company of its indemnification obligations set forth in this Section 10.04 to the extent any Indemnitee is found so liable. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee 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, other than for direct or actual damages resulting from either (i) the gross negligence, bad faith or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction, or (ii) the material breach of such Indemnitee's confidentiality obligations under this

Agreement or any other Loan Document as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e), shall survive the resignation of the Administrative Agent, the Swing Line Lender and the L/C Issuer, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of any Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of 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, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time after the Closing Date assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) 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 Commitment and the related Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in subsection (b)(i)(B) of this Section in the aggregate or in

the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitments and the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 in the case of any assignment in respect of a Revolving Commitment (and the related Revolving Loans thereunder) and \$1,000,000 in the case of any assignment in respect of a Term Loan, unless each of the Administrative Agent and, so long as no Specified Event of Default has occurred and is continuing, the Company otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Company (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Specified Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Revolving Lender, an Affiliate of a Revolving Lender or an Approved Fund of a Revolving Lender; provided that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required in respect of (1) any unfunded Term Loan Commitment or any Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable facility subject to such assignment, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving A Commitment if such assignment is to a Person that is not a Lender with a Revolving A Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iii) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(iv) No Assignment to Certain Persons. No such assignment shall be made (A) to the Company or any of the Company's Affiliates or Subsidiaries, or (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) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(v) 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 Company 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 or any 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 Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

**Article XLVI** 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 Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Company (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person), a Defaulting Lender or the Company or any of the Company's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including participations in L/C Obligations and/or Swing Line 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 Company, the Administrative Agent, the other Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such

Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

**Article XLVII** Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 10.01(a) through (h) that affects such Participant. The Company agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e)) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Company's request and expense, to use reasonable efforts to cooperate with the Company to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Company, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; 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.

(f) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving A Commitment and Revolving A Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty days' notice to the Company and the Lenders, resign as L/C Issuer and/or (ii) upon thirty days' notice to the Company, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Company shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Company to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and

duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (1) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (2) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

(g) Disqualified Institutions.

(i) No assignment shall be made to any Person that was a Disqualified Institution as of the date (the “Trade Date”) on which the applicable Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Company has consented to such assignment as otherwise contemplated by this Section 10.06, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of “Disqualified Institution”), such assignee shall not retroactively be considered a Disqualified Institution. Any assignment in violation of this clause (g)(i) shall not be void, but the other provisions of this clause (g) shall apply.

(ii) If any assignment is made to any Disqualified Institution without the Company’s prior consent in violation of clause (i) above, the Company may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Institution and repay all obligations of the applicable Borrower owing to such Disqualified Institution in connection with such Revolving Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, prepay such Term Loans by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents and/or (C) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 10.06), all of its interest, rights and obligations under this Agreement and the Loan Documents to an Eligible Assignee that shall assume such obligations at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents; provided, that, (i) the Company shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b), (ii) such assignment does not conflict with applicable Laws and (iii) in the case of clause (B), the Company shall not use the proceeds from any Loans to prepay Term Loans held by Disqualified Institutions.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Company, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or

confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws ("Plan of Reorganization"), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restrictions in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Company hereby expressly authorizes the Administrative Agent, to (A) post the DQ List on the Platform, including that portion of the Platform that is designated for "public side" Lenders or (B) provide the DQ List to each Lender requesting the same.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Related Parties and to any Swap Provider (or such Swap Provider's professional advisor) (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; provided that the Person required to disclose such information shall, to the extent permitted by law, rule or regulation and reasonably practicable, promptly inform the Company, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (it being understood that the DQ List may be disclosed to any assignee, or prospective assignee, in reliance on this clause (f)) or (ii) any actual or prospective Swap Provider (or its advisors), (g) on a confidential basis to (A) rating agencies with respect to ratings of a Lender, the Company or its Subsidiaries, or the credit facilities provided hereunder, (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, the L/C Issuer or the Swing Line Lender to deliver Borrower Materials or notices to the Lenders or (C) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing, and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Company or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, (y) becomes available to the Administrative Agent, the L/C Issuer, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Company or (z) is independently discovered or developed by a party hereto without utilizing any Information received from any Credit Party or violating the terms of this Section 10.07. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent, the L/C Issuer and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, "Information" means all information received from the Company or any Subsidiary relating to the Company or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Company or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Company or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower against any and all of the obligations of such Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender or the L/C Issuer different from the branch or office or Affiliate holding such deposit or obligated on such indebtedness; provided, that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Company and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** As used in this Agreement the term "interest" does not include any fees (including, but not limited to, any loan fee, periodic fee, unused commitment fee or waiver fee) or other charges imposed on the Borrowers in connection with the indebtedness evidenced by this Agreement, other than the interest described herein. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. It is the express intent hereof no Borrower shall pay, and no Lender receive, directly or indirectly, interest in excess of that which may be lawfully paid under applicable Law, including the usury laws in force in the State of Georgia.

**10.10 Integration; Effectiveness.**

**Article XLVIII** This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties

relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan

Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable,

(a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.** If the Company is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any

Lender is a Defaulting Lender or a Non-Consenting Lender, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the Company shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not violate applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Company, the Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided, that, (i) following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender and (ii) any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 10.13 to the contrary, (a) the Lender that acts as the L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to the L/C Issuer) have been made with respect to such outstanding Letter of Credit and (b) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

#### **10.14 Governing Law; Jurisdiction; Etc.**

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY OTHER JURISDICTION.

(b) **SUBMISSION TO JURISDICTION.** THE COMPANY AND EACH OTHER CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS

AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY OTHER CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE COMPANY AND EACH OTHER CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HERAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. Each Foreign Borrower irrevocably designates and appoints the Company, as its authorized agent, to accept and acknowledge on its behalf, service of any and all process which may be served in any suit, action or proceeding of the nature referred to in Section 10.14(b). The Company hereby represents, warrants and confirms that the Company has agreed to accept such appointment. Said designation and appointment shall be irrevocable by each Foreign Borrower until all Obligations payable by such Foreign Borrower shall have been paid in full in accordance with the provisions hereof and such Foreign Borrower shall have been terminated as a Borrower hereunder. Each Foreign Borrower hereby consents to process being served in any suit, action or proceeding of the nature referred to in Section 10.14(b) by service of process upon the Company as provided in this Section 10.14(d); provided that, to the extent lawful and possible, notice of said service upon such agent shall be mailed by certified or registered mail or sent by facsimile to the Company and (if applicable to) such Foreign Borrower at its address set forth on Section 10.02. Each Foreign Borrower irrevocably waives, to the fullest extent permitted by law, all claim of error by reason of any such service in such manner and agrees that such service shall be deemed in every respect effective service of process upon such Foreign Borrower in any suit, action or proceeding and shall, to the fullest extent permitted by law, be taken and held to be valid and personal service upon personal delivery to such Foreign Borrower.

**10.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HERETO OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16 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), each Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers, the Sustainability Coordinator and the Lenders, are arm's-length commercial transactions between such Credit Party and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers, the Sustainability Coordinator and the Lenders,

on the other hand, (B) such Credit Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) such Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arrangers, the Sustainability Coordinator and the Lenders each are and have been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have not been, are not, and will not be acting as an advisor, agent or fiduciary for such Credit Party or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, the Arrangers, the Sustainability Coordinator nor the Lenders have any obligation to such Credit Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers, the Sustainability Coordinator and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of such Credit Party and its Affiliates, and neither the Administrative Agent, the Arrangers, the Sustainability Coordinator nor the Lenders have any obligation to disclose any of such interests to such Credit Party or its Affiliates. To the fullest extent permitted by law, each Credit Party hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers, the Sustainability Coordinator and 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.

#### **10.17 Electronic Execution.**

(a) This Agreement, any Loan Document, and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Credit Parties, the Administrative Agent and the Lender Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this Section 10.17(a) may include use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into .pdf format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Each of the Administrative Agent and each Lender Party may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent, the L/C Issuer nor the Swing Line Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, that, without limiting the foregoing, (a) to the extent the Administrative Agent, the L/C Issuer and/or the Swing Line Lender has agreed to accept such Electronic Signature, the Administrative Agent and each Lender Party shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Credit Party, the Administrative Agent, and/or any Lender Party without further verification and regardless of the appearance or form of such Electronic Signature, and (b) upon the request of the Administrative Agent or any Lender Party, any Communication executed using an Electronic Signature shall be promptly followed by a manually executed counterpart.

(b) Neither the Administrative Agent, the L/C Issuer nor the Swing Line Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Communication (including in connection with the Administrative Agent’s, the L/C Issuer’s or the Swing Line Lender’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). Each

of the Administrative Agent, the L/C Issuer and the Swing Line Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

(c) Each of the Credit Parties and the Lender Parties hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement and/or any other Communication based solely on the lack of paper original copies of this Agreement or such Communication, as applicable, and (ii) any claim against the Administrative Agent or any Lender Party and any Related Party of the foregoing for any liabilities arising solely from the Administrative Agent's and/or such Lender Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of any Credit Party or any Lender Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

(d) Each Person party to this Agreement represents and warrants to each other Person party to this Agreement that such Person has the corporate capacity and authority to execute this any Communication through electronic means and there are no restrictions on doing so in that party's constitutive documents.

**10.18 USA PATRIOT Act and Canadian AML Acts.** Each Lender that is subject to the Act (as hereinafter defined) or any Canadian AML Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") and the Canadian AML Acts, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each Credit Party, information concerning its direct and indirect holders of Equity Interests and other Persons exercising Control over it, and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Credit Party in accordance with the Act and the Canadian AML Acts. Each Borrower shall (and the Company shall cause each Credit Party to), promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti money laundering rules and regulations, including the Act and the Canadian AML Acts.

**10.19 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Credit Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Credit Party in the Agreement Currency, such Credit Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Credit Party (or to any other Person who may be entitled thereto under applicable law).

**10.20 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 Lender or the L/C Issuer that is an 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 Lender or the L/C Issuer 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.

**10.21 Acknowledgement Regarding Any Supported QFCs.**

**Article XLIX** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Agreement 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): 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 such 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 such 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.

**10.22 Appointment of Company.**

**Article L** Without limiting Section 2.16(d), each of the Credit Parties hereby appoints the Company to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Company may execute such documents and provide such authorizations on behalf of such Credit Parties as the Company

deems appropriate in its sole discretion and each Credit Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, the L/C Issuer or a Lender to the Company shall be deemed delivered to each Credit Party and (c) the Administrative Agent, the L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Company on behalf of each of the Credit Parties.

## **ARTICLE XI GUARANTY**

### **11.01 The Guaranty.**

**Article LI** Each of the Guarantors hereby jointly and severally guarantees to each Lender, the L/C Issuer and each other holder of Obligations as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

**Article LII** Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents or the other documents relating to the Obligations, (a) the obligations of each Guarantor under this Agreement and the other Loan Documents shall not exceed an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under applicable Debtor Relief Laws, and if the Obligations would otherwise be held or determined to be avoidable on account of the amount of such Guarantor's liability under this Article XI, then the amount of such liability shall be automatically limited and reduced to the highest amount that is valid and enforceable and (b) no Foreign Borrower shall guarantee the Obligations of the Domestic Credit Parties.

### **11.02 Obligations Unconditional.**

**Article LIII** The obligations of the Guarantors under Section 11.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 11.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Company or any other Credit Party for amounts paid under this Article XI until such time as the Obligations have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of any of the Loan Documents or other documents relating to the Obligations shall be done or omitted;

(c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or other documents relating to the Obligations shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent or any other holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected; or

(e) any of the Obligations shall be determined to be void or voidable (including for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including any creditor of any Guarantor).

**Article LIV** With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other document relating to the Obligations, or against any other Person under any other guarantee of, or security for, any of the Obligations.

#### **11.03 Reinstatement.**

**Article LV** The obligations of each Guarantor under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each other holder of the Obligations on demand for all reasonable and documented out-of-pocket costs and expenses (including Attorney Costs) incurred by the Administrative Agent or such holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

#### **11.04 Certain Additional Waivers.**

**Article LVI** Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 10.02 and through the exercise of rights of contribution pursuant to Section 11.06.

#### **11.05 Remedies.**

**Article LVII** The Guarantors agree that, to the fullest extent permitted by Law, as between the Guarantors, on the one hand, and the Administrative Agent and the other holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as specified in Section 8.01 (and shall be deemed to have become automatically due and payable in the circumstances specified in Section 8.01 for purposes of Section 11.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Obligations may exercise their remedies thereunder in accordance with the terms thereof.

#### **11.06 Rights of Contribution.**

**Article LVIII** The Guarantors hereby agree as among themselves that, if any Guarantor shall make an Excess Payment (as defined below), such Guarantor shall have a right of contribution from each other Guarantor in an amount equal to such other Guarantor's Contribution Share (as defined below) of such

Excess Payment. The payment obligations of any Guarantor under this Section 11.06 shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been paid-in-full and the Commitments have terminated, and none of the Guarantors shall exercise any right or remedy under this Section 11.06 against any other Guarantor until such Obligations have been paid-in-full and the Commitments have terminated. For purposes of this Section 11.06, (a) “Excess Payment” shall mean the amount paid by any Guarantor in excess of its Ratable Share of any Obligations; (b) “Ratable Share” shall mean, for any Guarantor in respect of any payment of Obligations, the ratio (expressed as a percentage) as of the date of such payment of Obligations of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair saleable value of all assets and other properties of all of the Credit Parties exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Credit Parties hereunder) of the Credit Parties; provided, however, that, for purposes of calculating the Ratable Shares of the Guarantors in respect of any payment of Obligations, any Guarantor that became a Guarantor subsequent to the date of any such payment shall be deemed to have been a Guarantor on the date of such payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such payment; and (c) “Contribution Share” shall mean, for any Guarantor in respect of any Excess Payment made by any other Guarantor, the ratio (expressed as a percentage) as of the date of such Excess Payment of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair saleable value of all assets and other properties of the Credit Parties other than the maker of such Excess Payment exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Credit Parties) of the Credit Parties other than the maker of such Excess Payment; provided, however, that, for purposes of calculating the Contribution Shares of the Guarantors in respect of any Excess Payment, any Guarantor that became a Guarantor subsequent to the date of any such Excess Payment shall be deemed to have been a Guarantor on the date of such Excess Payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such Excess Payment. This Section 11.06 shall not be deemed to affect any right of subrogation, indemnity, reimbursement or contribution that any Guarantor may have under Law against the Company in respect of any payment of Obligations.

#### **11.07 Guarantee of Payment; Continuing Guarantee.**

**Article LIX** The guarantee in this Article XI is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to the Obligations whenever arising.

#### **11.08 Keepwell.**

**Article LX** Each Credit Party that is a Qualified ECP Guarantor at the time the Guaranty in this Article XI by any Credit Party that is not then an “eligible contract participant” under the Commodity Exchange Act (a “Specified Credit Party”) or the grant of a security interest under the Loan Documents by any such Specified Credit Party, in either case, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Credit Party with respect to such Swap Obligation as may be needed by such Specified Credit Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor’s obligations and undertakings under this Article XI voidable under applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Credit Party intends this Section to constitute, and this Section shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each Specified Credit Party for all purposes of the Commodity Exchange Act.

*[Signature pages intentionally omitted.]*

EXHIBIT A-1

[FORM OF] LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 4, 2017 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among EnerSys, a Delaware corporation, certain other Borrowers party thereto, the Guarantors party thereto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, Swing Line Lender and the L/C Issuer.

The undersigned Borrower hereby requests:

- A Borrowing of [Revolving A Loans][Revolving B Loans][the Initial Term Loan][the Initial Term A-2 Loan][the Term A-3 Loan][an Incremental Term Loan]
- A conversion or continuation of [Revolving A Loans][Revolving B Loans] [the Initial Term Loan][the Initial Term A-2 Loan][the Term A-3 Loan][an Incremental Term Loan]

1. On \_\_\_\_\_ (a Business Day).

2. In the aggregate principal amount of \$\_\_\_\_\_.

3. Comprised of \_\_\_\_\_.

[Type of Loan Requested]

4. For [Term SOFR Loans][Alternative Currency Term Rate Loans]: with an Interest Period of \_\_\_\_\_ month[s].

5. Currency:\_\_\_\_\_.

With respect to such Borrowing, the undersigned Borrower hereby represents and warrants that (i) such request complies with the requirements of [Section 2.01(a)][Section 2.01(b)][Section 2.01(c)][Section 2.01(d)][Section 2.01(e)][Section 2.01(f)] of the Credit Agreement and (ii) each of the conditions set forth in Sections 4.02(a) and (b) of the Credit Agreement has been satisfied on and as of the date of such Borrowing.

Delivery of an executed counterpart of a signature page of this Loan Notice by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Loan Notice.

[signature page follows]

IN WITNESS WHEREOF, the undersigned Borrower has caused this Loan Notice to be executed by a duly authorized officer as of the date first written above.

[APPLICABLE BORROWER]

By: \_\_  
Name:  
Title:

**Exhibit 21.1****ENERSYS  
Subsidiaries**

EnerSys Argentina S.A.	Argentina
EnerSys Australia Pty Ltd.	Australia
ICS Industries Pty Ltd.	Australia
ICS Sheet Metal Pty Ltd.	Australia
Alpha Technologies Pty. Ltd.	Australia
EnerSys GmbH	Austria
EnerSys Belgium BV	Belgium
EnerSys Brasil Ltda.	Brazil
EnerSys Participacoes Ltda.	Brazil
Industrial Battery Holding Ltda.	Brazil
Alpha Innovations Industria e Comercio de Produtos Eletronicos Ltda.	Brazil
EnerSys Bulgaria EOOD	Bulgaria
EnerSys Canada Inc.	Canada
Alpha Technologies Ltd.	Canada
EnerSys Cayman Euro L.P.	Cayman Islands
EnerSys Cayman Holdings L.P.	Cayman Islands
EnerSys Cayman Inc.	Cayman Islands
YCI, Inc.	Cayman Islands
EnerSystem Chile Ltda.	Chile
EnerSys (Chaozhou) Huada Batteries Company Limited	China
EnerSys (China) Huada Batteries Company Limited	China
EnerSys (Chongqing) Huada Batteries Company Limited	China
EnerSys (Jiangsu) Huada Batteries Company Limited (94.7%) *	China
EnerSys (Yangzhou) Huada Batteries Co. Ltd.	China
EnerSys, s.r.o.	Czech Republic
EnerSys A/S	Denmark
EnerSys Europe Oy	Finland
EnerSys SARL	France
EnerSys SNC	France
Hawker GmbH	Germany
EnerSys AE	Greece
EnerSys Asia Limited	Hong Kong
Telecomponents & Supply (Hong Kong) Ltd.	Hong Kong
EnerSys Hungária Kft.	Hungary
EnerSys Battery Private Limited	India
EnerSys India Batteries Private Ltd.	India
Alpha Tech Energy Solutions India Private Limited	India
EnerSys S.r.l.	Italy
EnerSys Holdings (Luxembourg) Sarl	Luxembourg
EnerSys (Luxembourg) Finance Sarl	Luxembourg

DCPM Engineering Sdn Bhd	Malaysia
EnerSys Malaysia Sdn Bhd	Malaysia
MIB Energy Sdn Bhd	Malaysia
UTS Holdings Sdn Bhd	Malaysia
UTS Technology (JB) Sdn Bhd	Malaysia
UTS Technology (PG) Sdn Bhd	Malaysia
EnerSys de Mexico, S de R.L. de CV	Mexico
EnerSys de Mexico II, S de R.L. de CV	Mexico
Powersonic, S de R.L. de CV	Mexico
Yecoltd, S. de R.L. de CV	Mexico
Batterias Hawker de Mexico S. de R.L. de C.V.	Mexico
Alpha Mexico Network Power S.A. de C.V.	Mexico
Riverfront Holding S. de R.L. de C.V.	Mexico
Alpha Innovations Mexico S. de R.L. de C.V.	Mexico
ENAS Industrial Batteries Morocco Sarl	Morocco
EnerSys AS	Norway
EnerSys sp. z o.o.	Poland
EnerSys JSC	Russia
Battery Power International Pte Ltd.	Singapore
EnerSys Reserve Power Pte. Ltd.	Singapore
EnerSys South East Asia Pte. Ltd.	Singapore
NaviSemi Energy Pte Ltd.	Singapore
EnerSys, s.r.o.	Slovak Republic
Acumuladores Industriales EnerSys SA	Spain
EnerSys AB	Sweden
Purcell Systems International AB	Sweden
N Holding AB	Sweden
EH Batterien AG	Switzerland
EH Europe GmbH	Switzerland
EH Global Holdings GmbH	Switzerland
EH Swiss Holdings GmbH	Switzerland
EnerSys BV	The Netherlands
Enersys Akü Sanaya Dis Ticaret Limited Sirketi	Turkey
EnerSys LLC	Ukraine
ABSL Power Solutions Ltd.	United Kingdom
EnerSys Holdings UK Ltd.	United Kingdom
EnerSys Ltd.	United Kingdom
NaviSemi Inc.	California
ABSL Power Solutions Inc.	Delaware
EnerSys Advanced Systems Inc.	Delaware
EnerSys Capital Inc.	Delaware
EnerSys Delaware Inc.	Delaware
EnerSys Delaware LLC I	Delaware
EnerSys Delaware LLC II	Delaware
EnerSys Delaware LLC III	Delaware

EnerSys Delaware LLC IV	Delaware
EnerSys Delaware LLC V	Delaware
EnerSys Energy Products Inc.	Delaware
EnerSys Finance LLC	Delaware
EnerSys European Holding Co.	Delaware
EnerSys Mexico Holdings LLC	Delaware
EnerSys Mexico Management LLC	Delaware
Esfincos, LLC	Delaware
Hawker Powersource, Inc.	Delaware
Hawker Power Systems, Inc.	Delaware
Purcell Systems, Inc.	Delaware
Quallion LLC	Delaware
New Pacifico Realty, Inc.	Nevada
Alpha Technologies Services, Inc.	Nevada

\* Majority-owned by EnerSys with the remaining interests held by third parties.

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-226712) pertaining to the EnerSys 2018 Employee Stock Purchase Plan,
- (2) Registration Statement (Form S-8 No. 333-219838) pertaining to the EnerSys 2017 Equity Incentive Plan, and
- (3) Registration Statement (Form S-8 No. 333-168717) pertaining to the EnerSys 2010 Equity Incentive Plan;

of our reports dated May 24, 2023, with respect to the consolidated financial statements of EnerSys and the effectiveness of internal control over financial reporting of EnerSys included in this Annual Report (Form 10-K) of EnerSys for the year ended March 31, 2023.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania  
May 24, 2023

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
PURSUANT TO RULE 13a-14(a)/15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, David M. Shaffer, certify that:

1. I have reviewed this Annual Report on Form 10-K of EnerSys;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting, which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

ENERSYS

By /s/ David M. Shaffer

David M. Shaffer  
Chief Executive Officer

Date: May 24, 2023

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER  
PURSUANT TO RULE 13a-14(a)/15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Andrea J. Funk, certify that:

1. I have reviewed this Annual Report on Form 10-K of EnerSys;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting, which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

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By /s/ Andrea J. Funk

Andrea J. Funk  
Chief Financial Officer

Date: May 24, 2023

**CERTIFICATION OF THE 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 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 of EnerSys on Form 10-K for the fiscal year ended March 31, 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 Form 10-K fairly presents, in all material respects, the financial condition and results of operations of EnerSys.

ENERSYS

By /s/ David M. Shaffer  
David M. Shaffer  
Chief Executive Officer

By /s/ Andrea J. Funk  
Andrea J. Funk  
Chief Financial Officer

Date: May 24, 2023