

Court File No. SJM-45-2020

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*  
R.S.C. 1985, c. C-36, AS AMENDED

COURT OF QUEEN'S BENCH  
CLERK / SAINT JOHN

REC'D  
JUN 23 2020  
FILED  
DEPOSE

BETWEEN:

**SKILLSOFT CANADA, LTD.**

COUR DU BANC DE LA REINE  
GREFFIERE / SAINT JOHN

APPLICANT

-and-

**SKILLSOFT CORPORATION, AMBER HOLDING  
INC., SUMTOTAL SYSTEMS LLC, MINDLEADERS,  
INC., ACCERO, INC., CYBERSHIFT HOLDINGS,  
INC., CYBERSHIFT, INC. (U.S.), POINTWELL  
LIMITED, SSI INVESTMENTS I LIMITED, SSI  
INVESTMENTS II LIMITED, SSI INVESTMENTS III  
LIMITED, SKILLSOFT LIMITED, SKILLSOFT  
IRELAND LIMITED, THIRDFORCE GROUP LIMITED,  
SKILLSOFT U.K. LIMITED AND SKILLSOFT  
CANADA, LTD.**

RESPONDENTS

APPLICATION OF SKILLSOFT CANADA, LTD.  
UNDER PART IV OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by Skillsoft Canada, Ltd. in its capacity as the foreign representative (the "**Foreign Representative**") of the Chapter 11 Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day by the Court of Queen's Bench of New Brunswick (Trial Division), via a teleconference hearing.

JFS

ON READING the Notice of Application, the affidavit of John Frederick sworn on June 19, 2020 (the "**Frederick Affidavit**"), the preliminary report of Richter Advisory Group Inc., in its capacity as proposed Information Officer (as defined below) dated June 17, 2020, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, counsel for the proposed Information Officer, counsel for an ad hoc group of first lien lenders (the "**Ad Hoc First Lien Group**"), counsel for an ad hoc group of first and second lien lenders (the "**Ad Hoc Crossholder Group**") and on reading the consent of Richter Advisory Group Inc. to act as the information officer:

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **INITIAL RECOGNITION ORDER**

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated June 19, 2020 (the "**Recognition Order**") and in the Frederick Affidavit, as applicable.
3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

#### **RECOGNITION OF FOREIGN ORDERS**

4. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* attached as Schedule "A" of this Order;

- (b) *Order Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date attached as Schedule "B" of this Order;*
- (c) *Order Pursuant to 11 U.S.C. § 105 Enforcing the Protections of 11 U.S.C. §§ 362, 365, 525, and 541 attached as Schedule "C" of this Order;*
- (d) *Order Authorizing Skillsoft Canada, Ltd. to Act as Foreign Representative on Behalf of the Debtors' Estates pursuant to 11 U.S.C. § 1505 attached as Schedule "D" of this Order;*
- (e) *Interim Order (I) Authorizing Debtors to (A) Continue Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related to the Use Thereof, and (C) Continue Intercompany Transactions and Provide Administrative Expense Priority for Postpetition Intercompany Claims; (II) Extending Time to Comply with 11 U.S.C. § 345(b); and (III) Granting Related Relief attached as Schedule "E" of this Order;*
- (f) *Interim Order (I) Authorizing Debtors to (A) Continue to Maintain their Insurance Policies and Programs, (B) Honor all Insurance Obligations, and (C) Modify the Automatic Stay with Respect to the Workers' Compensation Program, and (II) Granting Related Relief attached as Schedule "F" of this Order;*
- (g) *Interim Order (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Fees, and (II) Granting Related Relief attached as Schedule "G" of this Order;*
- (h) *Interim Order (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining Adequate Assurance of Payment for Future Utility Services, (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Service, and (IV) Granting Related Relief attached as Schedule "H" of this Order;*
- (i) *Interim Order (I) Authorizing the Debtors to Pay Prepetition Trade Claims in Ordinary Course of Business and (II) Granting Related Relief attached as Schedule "I" of this Order;*

- (j) *Interim Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Reimbursable Expenses, and Other Obligations on Account of Compensation and Benefits Programs and (B) Continue Compensation and Benefits Programs and (II) Granting Related Relief attached as Schedule "J" of this Order;*
- (k) *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying Automatic Stay, (V) Scheduling Final Hearing, and (VI) Granting Related Relief attached as Schedule "K" of this Order (the "**Interim DIP Order**");*
- (l) *Order (I) Scheduling Combined Hearing to Consider (A) Approval of Disclosure Statement, (B) Approval of Solicitation Procedures and Forms of Ballots, and (C) Confirmation of Prepackaged Plan; (II) Establishing an Objection Deadline to Object to Disclosure Statement and Plan; (III) Approving the Form and Manner of Notice of Combined Hearing, Objection Deadline, and Notice of Commencement; (IV) Conditionally Waiving Requirement of Filing Statement of Financial Affairs and Schedules of Assets and Liabilities; (V) Approving Notice and Objection Procedures for the Assumption or Rejection of Executory Contracts and Unexpired Leases; (VI) Conditionally Waiving Requirement to Convene the Section 341 Meeting of Creditors; and (VII) Granting Related Relief Pursuant to Sections 105(a), 341, 521(a), 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 1007, 2002, 3017, and 3018 attached as Schedule "L" of this Order;*
- (m) *Order (I) Authorizing the Debtors to (A) Enter into an Exclusivity Letter with the Interested Party, and (B) Perform their Obligations thereunder, Including Payment of the Upfront Payment Amount, and (II) Granting Related Relief attached as Schedule "M" of this Order;*
- (n) *Order Authorizing the Debtors to File Under Seal and Redact Certain Identity Information in the Motion to Enter into Exclusivity Letter attached as Schedule "N" of this Order;*

- (o) Order pursuant to 11 U.S.C. §§ 105 and 107, FED. R. BANKR. P. 9018, and DEL. BANKR. L.R. 9018-1 authorizing the Debtors to File the Proposed Debtor-In-Possession Financing Fee Letters Under Seal attached as Schedule "O" of this Order; and
- (p) Interim Order Pursuant to 11 U.S.C. Sections 105 and 107, Fed. R. Bankr. P. 9018 and Del. Bankr. L.R. 9018-1 Authorizing the Debtors to File (I) Portions of the Creditor Matrix Under Seal and (II) the Commercial Information and the Personal Information in Future Filings Under Seal attached as Schedule "P" of this Order.

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER**

5. THIS COURT ORDERS that Richter Advisory Group Inc. (the "**Information Officer**") is hereby appointed as an officer of this Court, with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST THE CHAPTER 11 DEBTORS OR THE PROPERTY**

6. THIS COURT ORDERS that from the date of the Recognition Order until and including June 29, 2020, or such later date as this Court may subsequently order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business (the "**Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

7. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of

the Chapter 11 Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Chapter 11 Debtors to carry on any business in Canada which that Chapter 11 Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

8. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Chapter 11 Debtors and affecting the Business in Canada, except with leave of this Court.

#### **ADDITIONAL PROTECTIONS**

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Chapter 11 Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

**OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. THIS COURT ORDERS that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court periodically with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Chapter 11 Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that the Chapter 11 Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Chapter 11 Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-

operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that the Information Officer may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

17. THIS COURT ORDERS that Canadian counsel to the Chapter 11 Debtors, the Information Officer and counsel to the Information Officer shall be paid by the Chapter 11 Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Chapter 11 Debtors are hereby authorized and directed to pay the accounts of Canadian counsel to the Chapter 11 Debtors, the Information Officer and counsel for the Information Officer forthwith upon receipt.

18. THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Trial Division of the Court of



Queen's Bench of New Brunswick, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

#### **INTERIM FINANCING**

20. THIS COURT ORDERS that the Collateral Agent (as such term is defined in the DIP Credit Agreement), for and on behalf of itself, the Administrative Agent (as such term is defined in the DIP Credit Agreement), and the other Lenders (as such term is defined in the DIP Credit Agreement) shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lenders' Charge**") on the Property in Canada as security for the Obligations (as such term is defined in the DIP Credit Agreement), which DIP Lenders' Charge shall be consistent with the liens and charges created by the Interim DIP Order, provided however that the DIP Lenders' Charge, with respect to the Property in Canada, shall have the priority set out in paragraphs 21 and 23 hereof, and further provided that the DIP Lenders' Charge shall not be enforced except with leave of this Court, it being understood that the Collateral Agent shall be entitled to deliver a Termination Declaration (as defined in the Interim DIP Order) in accordance with the Interim DIP Order without obtaining leave of this Court.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

21. THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lenders' Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$150,000); and

Second – DIP Lenders' Charge.

22. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected

subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

23. THIS COURT ORDERS that the Charges (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, subject however, in the case of the DIP Lenders' Charge only, to the Carve Out and the Existing Senior Liens, if any (each as defined in the Interim DIP Order).

24. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Charges, unless the Chapter 11 Debtors also obtain the prior written consent of the Information Officer and the Lenders.

25. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy or receivership order made pursuant to such applications; (iii) the filing of any assignment for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

- (c) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order and the DIP Documents, and the granting of the Charges, do not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct, or other challengeable or voidable transaction under any applicable law.

26. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Chapter 11 Debtor's interest in such real property leases.

### **SERVICE AND NOTICE**

27. The Information Officer shall: i) without delay, publish in the Globe and Mail, National Edition and the Telegraph Journal a notice containing the information prescribed under the CCAA; and ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

28. The Information Officer shall create a list of names and contact information, including Email addresses, of all known creditors who have a claim against the Applicant of more than \$1000, and all other parties to this proceeding (the "E-Service List"). The Information Officer shall exercise best efforts to ensure the E-Service list is correct and up-to-date, and shall make the E-Service List available on its website at:

<https://www.richter.ca/insolvencycase/skillssoft-canada-ltd/>

29. The Chapter 11 Debtors, the Foreign Representative and the Information Officer shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. Electronic

transmission of this Order, any other materials and orders in these proceedings, or any notices or other correspondence, shall be deemed to be effective substituted service in accordance with Rule 18.04 of the *Rules of Court*, provided the party serving the documents prepares an Affidavit of Service containing the particulars of the service, including the E-Service List served, the Email addresses to which the documents were sent and the time of the Emailing.

30. The Chapter 11 Debtors, the Foreign Representative and the Information Officer, and any party who has appeared in these proceedings through counsel may serve any court materials in these proceedings by e-mailing a PDF or an HTML link of such materials to counsels' email addresses as recorded on the service list from time to time, and the Information Officer shall post a copy of such materials on its website at <https://www.richter.ca/insolvencycase/skillsoft-canada-ltd/> in a manner that facilitates any interested party to easily locate court documents filed in this proceeding. The documents to be posted on the Information Officer's website is not intended to be exhaustive but shall include:

- (a) Notices of application/notices of motion;
- (b) All affidavits, including exhibits, and other material filed by an applicant/moving party with respect to this application or any motion;
- (c) All responding affidavits, including exhibits, and other material delivered in response to this application or any motions by all respondents;
- (d) All facta, briefs, and written arguments delivered by any party to this application or any within motion;
- (e) Books of authorities;
- (f) All court reports filed by the Information Officer or the Foreign Representative;
- (g) All Court Orders, Reasons for Decision, and Endorsements;
- (h) The current version of the E-Service List; and
- (i) Any document that requires dissemination to the interested parties, such as proof of claims forms, notices of creditor meeting, plan disclosure statements, plans of reorganization and voting letters as requested by the Applicant, the Foreign Representative or the Information Officer.

31. The Information Officer shall maintain the above information on its website for a period of at least six months after the completion of this proceeding.

#### GENERAL

32. THIS COURT ORDERS that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business or the Property.

34. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

35. THIS COURT ORDERS that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

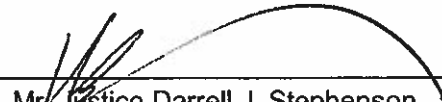
36. THIS COURT ORDERS that any materials and/or exhibits subject to a sealing order granted by the U.S. Bankruptcy Court and which have been filed in this Court's record shall be kept confidential and *under seal* until further order from this Court.

37. THIS COURT ORDERS that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and adopted by the U.S. Bankruptcy Court and attached as Schedule "Q" hereto is adopted by this Court for the purposes of these recognition proceedings.

38. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Chapter 11 Debtors, the Foreign Representative, the Information Officer, the Ad Hoc First Lien Group, the Ad Hoc Crossholder Group and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

39. THIS COURT ORDERS that this Order shall be effective as of 12:01 a.m. ADT on the date of this Order.

DATED this <sup>23<sup>rd</sup></sup> ~~19<sup>th</sup>~~ day of June, 2020 at Saint John, New Brunswick *effective*  
the 19<sup>th</sup> day of June, 2020  
JJS

  
Mr. Justice Darrell J. Stephenson  
Court of Queen's Bench – Trial Division

**Schedule "A"**

*Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief*

*(See attached)*

895

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----	X	
In re:	:	Chapter 11
	:	
SKILLSOFT CORPORATION,	:	Case No. 20-11532 (MFW)
	:	
Debtor.	:	
	:	
Fed. Tax Id. No. 02-0496115	:	
-----	X	
In re:	:	Chapter 11
	:	
AMBER HOLDING INC.,	:	Case No. 20-11534 (MFW)
	:	
Debtor.	:	
	:	
Fed. Tax Id. No. 26-4590335	:	
-----	X	
In re:	:	Chapter 11
	:	
SUMTOTAL SYSTEMS LLC,	:	Case No. 20-11533 (MFW)
	:	
Debtor.	:	
	:	
Fed. Tax Id. No. 42-1607228	:	
-----	X	
In re:	:	Chapter 11
	:	
MINDLEADERS, INC.,	:	Case No. 20-11535 (MFW)
	:	
Debtor.	:	
	:	
Fed. Tax Id. No. 98-0536072	:	
-----	X	





-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>ACCERO, INC.,</b>	:	<b>Case No. 20-11536 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. 26-1744684</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>CYBERSHIFT HOLDINGS, INC.,</b>	:	<b>Case No. 20-11538 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. 22-3482109</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>CYBERSHIFT, INC.,</b>	:	<b>Case No. 20-11537 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. 11-2530586</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>POINTWELL LIMITED,</b>	:	<b>Case No. 20-11540 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>SSI INVESTMENTS I LIMITED,</b>	:	<b>Case No. 20-11539 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	

-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>SSI INVESTMENTS II LIMITED,</b>	:	<b>Case No. 20-11541 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>SSI INVESTMENTS III LIMITED,</b>	:	<b>Case No. 20-11542 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>SKILLSOFT LIMITED,</b>	:	<b>Case No. 20-11543 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>SKILLSOFT IRELAND LIMITED,</b>	:	<b>Case No. 20-11544 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>THIRDFORCE GROUP LIMITED,</b>	:	<b>Case No. 20-11545 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	

-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>SKILLSOFT U.K. LIMITED,</b>	:	<b>Case No. 20-11546 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>SKILLSOFT CANADA, LTD.,</b>	:	<b>Case No. 20-11547 (MFW)</b>
	:	
<b>Debtor.</b>	:	
	:	
<b>Fed. Tax Id. No. N/A</b>	:	
-----	X	

**ORDER (I) DIRECTING JOINT ADMINISTRATION  
OF CHAPTER 11 CASES, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>1</sup> of Skillsoft Corporation (“Skillsoft”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for an entry of an order (i) directing joint administration of their chapter 11 cases for procedural purposes only, and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the relief requested in the Motion (the “Hearing”); and upon the First Day Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted to the extent set forth herein.
2. The above-captioned chapter 11 cases are consolidated for procedural purposes only and shall be jointly administered by this Court under Case No. 20-11532 (MFW).
3. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of these chapter 11 cases and this Order shall be without prejudice to the rights of the Debtors to seek entry of an order substantively consolidating their respective estates.

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4. The caption of the jointly administered cases shall read as follows:

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

----- X	
<b>In re:</b>	: <b>Chapter 11</b>
	:
<b>SKILLSOFT CORPORATION, et al.</b>	: <b>Case No. 20-11532 (MFW)</b>
	:
	:
<b>Debtors.<sup>1</sup></b>	: <b>(Jointly Administered)</b>
----- X	

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors' corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

5. A docket entry shall be made in each of the above-captioned cases substantially as follows:

An order has been entered in this case directing the procedural consolidation and joint administration of the chapter 11 cases of Skillsoft Corporation; Amber Holding Inc.; SumTotal Systems LLC; MindLeaders, Inc.; Accero, Inc.; CyberShift Holdings, Inc.; CyberShift, Inc. (U.S.); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The docket in Skillsoft Corporation, Case No. 20-11532 (MFW) should be consulted for all matters affecting this case.

6. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

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7. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware



MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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**Schedule "B"**

***Order Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and  
Noticing Agent Nunc Pro Tunc to the Petition Date***

***(See attached)***

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF DELAWARE**

-----	X	
<b>In re:</b>	:	
	:	<b>Chapter 11</b>
	:	
<b>SKILLSOFT CORPORATION, et al.</b>	:	<b>Case No. 20-11532 (MFW)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
	:	<b>Re: D.I. 12</b>
-----	X	

**ORDER AUTHORIZING THE  
 APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS  
 AND NOTICING AGENT NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “**Application**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to section 156(c) of title 28 of the United States Code, section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), requesting entry of an order appointing Kurtzman Carson Consultants LLC (“**KCC**”) as claims and noticing agent (“**Claims and Noticing Agent**”) in the Debtors’ chapter 11 cases, which will include KCC assuming full responsibility for the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

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distribution of notices and the maintenance, processing and docketing of proofs of claim, if any, filed in the Debtors' chapter 11 cases, all as more fully set forth in the Application; and upon the Jordan Declaration, filed contemporaneously with and attached to the Application as Exhibit B; and the Debtors having estimated that there are in excess of 10,000 notice parties in these chapter 11 cases; and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and that KCC does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Application having been provided to the Notice Parties, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Application (the "Hearing"); and upon the First Day Declaration, filed contemporaneously with the Application, the record of the Hearing and all of the proceedings had before the Court is in the best interests of the Debtors, their estates, creditors, and all parties in interest, and that the legal and factual bases set forth in the Application

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establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Debtors are authorized to retain KCC as Claims and Noticing Agent effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement.

2. KCC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application (collectively, the “Claims and Noticing Services”).

3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. KCC is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. KCC is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate KCC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate

documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the Office of the United States Trustee for the District of Delaware, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices; provided that the parties may seek resolution of the matter from the Court if resolution is not achieved.

8. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

9. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

10. The Debtors shall indemnify KCC under the terms of the Engagement Agreement, as modified pursuant to this Order.

11. KCC shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court.

12. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Order.

13. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these chapter 11 cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, KCC must file an application therefor in this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution or reimbursement.

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14. In the event KCC is unable to provide the services set out in this order, KCC will immediately notify the Clerk and the Debtors' attorney and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

15. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by KCC but is not specifically authorized by this Order.

16. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

17. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

18. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

19. KCC shall not cease providing claims processing services during the chapter 11 cases for any reason, including nonpayment, without an order of the Court.

20. In the event of any inconsistency between the Engagement Agreement, the Application and the Order, the Order shall govern.

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21. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware

RLF1 23576846V.1

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MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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**Schedule "C"**

*Order Pursuant to 11 U.S.C. § 105 Enforcing the Protections of 11 U.S.C. §§ 362, 365, 525,  
and 541*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
In re: :  
: : **Chapter 11**  
: :  
SKILLSOFT CORPORATION, *et al.* : : **Case No. 20-11532 (MFW)**  
: :  
Debtors.<sup>1</sup> : : **(Jointly Administered)**  
: :  
: : **Re: D.I. 11**  
----- X

**ORDER PURSUANT TO 11 U.S.C. § 105 ENFORCING  
THE PROTECTIONS OF 11 U.S.C. §§ 362, 365, 525, AND 541**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to section 105 of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order enforcing the protections of sections 362, 365, 525, and 541 of the Bankruptcy Code, to aid in the administration of these chapter 11 cases and to help ensure that the Debtors’ global business operations are not disrupted, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion (the “Hearing”); and upon the First Day Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted to the extent set forth herein.
2. Pursuant to section 362 of the Bankruptcy Code (a copy of the text of which is annexed hereto as **Exhibit 1**), the commencement of these chapter 11 cases shall operate as a stay, applicable to all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) of:
  - a. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors’ chapter 11 cases, or to recover a claim against the Debtors that arose before the commencement of the Debtors’ chapter 11 cases;
  - b. the enforcement, against the Debtors or against property of their estates, of a judgment obtained before the commencement of the Debtors’ chapter 11 cases;
  - c. any act to obtain possession of property of the estates or of property from the estates or to exercise control over property of the Debtors’ estates;

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- d. any act to create, perfect, or enforce any lien against property of the Debtors' estates;
- e. any act to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose before the commencement of the Debtors' chapter 11 cases;
- f. any act to collect, assess, or recover a claim against the Debtors that arose before the commencement of the Debtors' chapter 11 cases;
- g. the setoff of any debt owing to the Debtors that arose before the commencement of these chapter 11 cases; and
- h. the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of the Debtors for a taxable period the bankruptcy court may determine.

3. This Order shall not affect the exceptions to the automatic stay contained in section 362(b) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code.

4. Pursuant to section 365 of the Bankruptcy Code (a copy of the text of which is annexed hereto as **Exhibit 2**), and notwithstanding any contract or lease provision or applicable law, an executory contract or unexpired lease of the Debtors may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the Debtors' chapter 11 cases solely because of a provision in such contract or lease that is conditioned on (i) the insolvency or financial condition of any or all Debtors or (ii) the commencement of the Debtors' chapter 11 cases.

5. Pursuant to section 525 of the Bankruptcy Code (a copy of the text of which is annexed hereto as **Exhibit 3**), a foreign or domestic governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, the Debtors or the

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Debtors' affiliates on account of (i) the commencement of the Debtors' chapter 11 cases; (ii) the Debtors' insolvency; or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the Debtors' chapter 11 cases.

6. Pursuant to section 541 of the Bankruptcy Code, (a copy of the text of which is annexed hereto as Exhibit 4), any interest of the Debtors in property becomes property of the estates, notwithstanding any provision in any agreement, transfer instrument, or applicable nonbankruptcy law, that: (a) restricts or conditions transfer of such interest by the Debtors, or (b) is conditioned on the insolvency or financial condition of the Debtors or on the commencement of the Debtors' chapter 11 cases, and that effects or gives an option to effect a forfeiture, modification, or termination of the Debtor's interest in property. Any purported restriction, condition, forfeiture, modification, or termination is void *ab initio*.

7. This Order is intended to be declarative of and coterminous with, and shall neither abridge, enlarge nor modify, the rights and obligations of any party under sections 362, 365, 525, and 541 of the Bankruptcy Code or any other provision of the Bankruptcy Code.

8. The Debtors are authorized to take all steps necessary to carry out this Order.

9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware



MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Section 362 of the Bankruptcy Code**

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**§ 362. Automatic Stay**

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

- (1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;
- (2) under subsection (a)—
  - (A) of the commencement or continuation of a civil action or proceeding—
    - (i) for the establishment of paternity;
    - (ii) for the establishment or modification of an order for domestic support obligations;
    - (iii) concerning child custody or visitation;
    - (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
    - (v) regarding domestic violence;
  - (B) of the collection of a domestic support obligation from property that is not property of the estate;
  - (C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
  - (D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;
  - (E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
  - (F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
  - (G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;
- (3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;
- (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money

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judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[(5) Repealed. Pub. L. 105-277, div. I, title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-866;]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of —

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in

section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (f), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

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(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and



(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

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(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)

(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)

(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

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(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)

(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)

(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)

(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)

(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the

evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if—

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

Handwritten signature or initials, possibly "AS" or "AS" with a flourish.

**Exhibit 2**

**Section 365 of the Bankruptcy Code**

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**§ 365. Executory contracts and unexpired leases**

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)

(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance—

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

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- (1)
- (A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and
  - (B) such party does not consent to such assumption or assignment; or
- (2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or
- (3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief.
- (d)
- (1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.
- (2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.
- (3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.
- (4) (A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—
- (i) the date that is 120 days after the date of the order for relief; or
  - (ii) the date of the entry of an order confirming a plan.
- (B)
- (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.
  - (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.
- (5) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.
- (e)
- (1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—
- (A) the insolvency or financial condition of the debtor at any time before the closing of the case;
  - (B) the commencement of a case under this title; or
  - (C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

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(2) Paragraph (1) of this subsection does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(A)

(i) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(ii) such party does not consent to such assumption or assignment; or

(B) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(f)

(1) Except as provided in subsections (b) and (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if—

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

(3) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.

(g) Except as provided in subsections (h)(2) and (i)(2) of this section, the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease—

(1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition; or

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title—

(A) if before such rejection the case has not been converted under section 1112, 1208, or 1307 of this title, at the time of such rejection; or

(B) if before such rejection the case has been converted under section 1112, 1208, or 1307 of this title—

(i) immediately before the date of such conversion, if such contract or lease was assumed before such conversion; or

(ii) at the time of such rejection, if such contract or lease was assumed after such conversion.

(h)

(1)

(A) If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and—

(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the lessee retains its rights under subparagraph (A)(ii), the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such lease,

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but the lessee shall not have any other right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(C) The rejection of a lease of real property in a shopping center with respect to which the lessee elects to retain its rights under subparagraph (A)(ii) does not affect the enforceability under applicable nonbankruptcy law of any provision in the lease pertaining to radius, location, use, exclusivity, or tenant mix or balance.

(D) In this paragraph, "lessee" includes any successor, assign, or mortgagee permitted under the terms of such lease.

(2)

(A) If the trustee rejects a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller and—

(i) if the rejection amounts to such a breach as would entitle the timeshare interest purchaser to treat the timeshare plan as terminated under its terms, applicable nonbankruptcy law, or any agreement made by timeshare interest purchaser, the timeshare interest purchaser under the timeshare plan may treat the timeshare plan as terminated by such rejection; or

(ii) if the term of such timeshare interest has commenced, then the timeshare interest purchaser may retain its rights in such timeshare interest for the balance of such term and for any term of renewal or extension of such timeshare interest to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the timeshare interest purchaser retains its rights under subparagraph (A), such timeshare interest purchaser may offset against the moneys due for such timeshare interest for the balance of the term after the date of the rejection of such timeshare interest, and the term of any renewal or extension of such timeshare interest, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such timeshare plan, but the timeshare interest purchaser shall not have any right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(i)

(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest.

(2) If such purchaser remains in possession—

(A) such purchaser shall continue to make all payments due under such contract, but may, offset against such payments any damages occurring after the date of the rejection of such contract caused by the nonperformance of any obligation of the debtor after such date, but such purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset; and

(B) the trustee shall deliver title to such purchaser in accordance with the provisions of such contract, but is relieved of all other obligations to perform under such contract.

(j) A purchaser that treats an executory contract as terminated under subsection (i) of this section, or a party whose executory contract to purchase real property from the debtor is rejected and under which such party is not in possession, has a lien on the interest of the debtor in such property for the recovery of any portion of the purchase price that such purchaser or party has paid.

(k) Assignment by the trustee to an entity of a contract or lease assumed under this section relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.

(l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(10), leases of real property shall include any rental agreement to use real property.

(n)

(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

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- (B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—
- (i) the duration of such contract; and
  - (ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.
- (2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—
- (A) the trustee shall allow the licensee to exercise such rights;
  - (B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and
  - (C) the licensee shall be deemed to waive—
    - (i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and
    - (ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.
- (3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall—
- (A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and
  - (B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.
- (4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall—
- (A) to the extent provided in such contract or any agreement supplementary to such contract—
    - (i) perform such contract; or
    - (ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and
  - (B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.
- (o) In a case under chapter 11 of this title, the trustee shall be deemed to have assumed (consistent with the debtor's other obligations under section 507), and shall immediately cure any deficit under, any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution, and any claim for a subsequent breach of the obligations thereunder shall be entitled to priority under section 507. This subsection shall not extend any commitment that would otherwise be terminated by any act of such an agency.
- (p)
- (1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.
  - (2)
    - (A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.
    - (B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

**Exhibit 3**

**Section 525 of the Bankruptcy Code**

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**§ 525. Protection Against Discriminatory Treatment**

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

- (1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;
- (2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or
- (3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

(c)

(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a student grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, "student loan program" means any program operated under title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

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**Exhibit 4**

**Section 541 of the Bankruptcy Code**

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**§ 541. Property of the Estate**

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
  - (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
    - (A) under the sole, equal, or joint management and control of the debtor; or
    - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.
  - (3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.
  - (4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.
  - (5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—
    - (A) by bequest, devise, or inheritance;
    - (B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
    - (C) as a beneficiary of a life insurance policy or of a death benefit plan.
  - (6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.
  - (7) Any interest in property that the estate acquires after the commencement of the case.
- (b) Property of the estate does not include—
- (1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;
  - (2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;
  - (3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), [1] or any accreditation status or State licensure of the debtor as an educational institution;
  - (4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—
    - (A)
      - (i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and
      - (ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or
    - (B)
      - (i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and
      - (ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;
  - (5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—
    - (A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;
    - (B) only to the extent that such funds—
      - (i) are not pledged or promised to any entity in connection with any extension of credit; and
      - (ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

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- (C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$5,000;
- (6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—
  - (A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;
  - (B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and
  - (C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$5,000;
- (7) any amount—
  - (A) withheld by an employer from the wages of employees for payment as contributions—
    - (i) to—
      - (I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;
      - (II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or
      - (III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986; except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or
    - (ii) to a health insurance plan regulated by State law whether or not subject to such title; or
  - (B) received by an employer from employees for payment as contributions—
    - (i) to—
      - (I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;
      - (II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or
      - (III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986; except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or
    - (ii) to a health insurance plan regulated by State law whether or not subject to such title;
- (8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—
  - (A) the tangible personal property is in the possession of the pledgee or transferee;
  - (B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and
  - (C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);
- (9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—
  - (A) on or after the date that is 14 days prior to the date on which the petition is filed; and

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- (B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor), unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or
- (10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—
- (A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;
- (B) only to the extent that such funds—
- (i) are not pledged or promised to any entity in connection with any extension of credit; and
- (ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and
- (C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$6,225. Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.
- (c)
- (1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—
- (A) that restricts or conditions transfer of such interest by the debtor; or
- (B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.
- (2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.
- (d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.
- (e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.
- (f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

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**Schedule "D"**

*Order Authorizing Skillsoft Canada, Ltd. to Act as Foreign Representative on Behalf of the Debtors' Estates pursuant to 11 U.S.C. § 1505*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
In re: :  
: Chapter 11  
: SKILLSOFT CORPORATION, *et al.* : Case No. 20-11532 (MFW)  
: Debtors.<sup>1</sup> : (Jointly Administered)  
: : Re: D.I. 5  
----- X

**ORDER AUTHORIZING SKILLSOFT CANADA, LTD.  
TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF  
OF THE DEBTORS' ESTATES PURSUANT TO 11 U.S.C. § 1505**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for an order pursuant to section 1505 of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing Skillsoft Canada, Ltd. (“**Skillsoft Canada**”) to act as Foreign Representative on behalf of the Debtors’ estates in the Canadian Recognition Proceeding, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtor’s corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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the circumstances; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “**Hearing**”); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted as set forth herein.
2. Skillsoft Canada is authorized, pursuant to section 1505 of the Bankruptcy Code, to act as the Foreign Representative on behalf of the Debtors’ estates in the Canadian Recognition Proceeding. As Foreign Representative, Skillsoft Canada shall be authorized and have the power to act in any way permitted by applicable foreign law, including, but not limited to (i) seeking recognition of these chapter 11 cases and this Court’s orders, including the DIP Order, in the Canadian Recognition Proceeding, (ii) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors’ estates, and (iii) seeking any other appropriate relief from the Canadian Court that Skillsoft Canada deems just and proper in the furtherance of the protection of the Debtors’ estates.
3. This Court requests the aid and assistance of the Canadian Court to recognize these chapter 11 cases as a “foreign main proceeding” and Skillsoft Canada as a “foreign representative” pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order and any other orders for which recognition is sought.

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4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware



MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Schedule "E"**

***Interim Order (I) Authorizing Debtors to (A) Continue Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related to the Use Thereof, and (C) Continue Intercompany Transactions and Provide Administrative Expense Priority for Postpetition Intercompany Claims; (II) Extending Time to Comply with 11 U.S.C. § 345(b); and (III) Granting Related Relief***

***(See attached)***

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----	X	
<b>In re:</b>	:	
	:	<b>Chapter 11</b>
	:	
<b>SKILLSOFT CORPORATION, et al.</b>	:	<b>Case No. 20-11532 (MFW)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
	:	<b>Re: D.I. 10</b>
-----	X	

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE EXISTING CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED TO THE USE THEREOF, AND (C) CONTINUE INTERCOMPANY TRANSACTIONS AND PROVIDE ADMINISTRATIVE EXPENSE PRIORITY FOR POSTPETITION INTERCOMPANY CLAIMS; (II) EXTENDING TIME TO COMPLY WITH 11 U.S.C. § 345(b); AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for entry of orders (i) authorizing, but not directing, the Debtors to (a) continue using their existing cash management system (the “**Cash Management System**”), as described in the Motion, including the maintenance of existing bank account (the “**Bank Accounts**”) at their existing bank (the “**Banks**”) consistent with their prepetition practices, (b) honor certain prepetition obligations related to the Cash Management System, and (c) continue

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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Intercompany Transactions between and among the Debtors and their non-debtor affiliates and subsidiaries (the “**Non-Debtor Affiliates**”), as set forth herein but otherwise in the ordinary course of business and consistent with their prepetition practices, and to provide administrative expense priority for postpetition Intercompany Claims; (ii) extending the time to comply with the requirements of section 345(b) of the Bankruptcy Code; and (iii) granting certain related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the interim relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Rule 6003 of the Federal Rules of Bankruptcy Procedure, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted on an interim basis to the extent set forth herein.

2. The Debtors are authorized, but not directed, pursuant to sections 363(c) and 105(a) of the Bankruptcy Code, to continue to manage their cash pursuant to the Cash Management System maintained by the Debtors before the Petition Date; to collect and disburse cash in accordance with the Cash Management System and Ordinary Course Intercompany Transactions, except as otherwise set forth herein; and to make ordinary course changes to their Cash Management System, provided that such changes do not have a material adverse effect on the Debtors' estates.

3. The Debtors in their capacity as Originators are authorized, but not directed to continue complying with the terms of the AR Facility Agreement and the AR Purchase Agreement in the ordinary course of business.

4. The Debtors are authorized, but not directed, to continue using, in their present form (or as subsequently amended in accordance with this Interim Order), the Business Forms, as well as checks and other documents related to the Debtor Bank Accounts existing immediately before the Petition Date; *provided* that once the Debtors' existing Business Forms, checks, and other related documents have been used, the Debtors shall use reasonable efforts, when reordering checks or reprinting Business Forms or other related documents, to require the designation "Debtor in Possession" and the corresponding bankruptcy case number on such checks, Business Forms, and related documents; *provided further* that, with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within 10 business days of the date of entry of this Interim Order.

5. Notwithstanding anything to the contrary in the U.S. Trustee Operating Guidelines, the Debtors are further authorized to: (i) designate, maintain and continue to use any

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or all of their existing Debtor Bank Accounts in the names and with the account numbers existing immediately before the Petition Date in the ordinary course and in a manner consistent with prepetition practices; (ii) deposit funds in and withdraw funds from such accounts by all usual means, including through checks, wire transfers, ACH transfers, and other debits in the ordinary course and in a manner consistent with prepetition practices; (iii) pay any Bank Fees or other charges associated with the Debtor Bank Accounts, whether arising before or after the Petition Date, in the ordinary course and consistent with the Debtors' prepetition practice; and (iv) treat their prepetition Debtor Bank Accounts for all purposes as debtor in possession accounts.

6. The Debtors are authorized, subject to the reasonable consent of Required DIP Lenders (as defined in the DIP Orders (defined below)), to open new bank accounts and enter into any ancillary agreements, including new deposit account control agreements, related to the foregoing; *provided* that all accounts opened by any of the Debtors on or after the Petition Date at any bank shall, for purposes of this Interim Order, be deemed a Debtor Bank Account as if it had been listed on Appendix 1 to this Interim Order under the heading "Debtor Bank Accounts"; *provided further* that such opening of an account shall be timely indicated on the Debtors' monthly operating report and notice of such opening shall be provided within ten (10) business days to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), counsel to any statutory committee appointed in these chapter 11 cases, and counsel to the administrative agent for the Debtors' prepetition and proposed postpetition financing lenders; and *provided further* that the Debtors shall only open any such new Debtor Bank Account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such agreement.

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7. Each Bank is authorized to accept and rely upon, all representations from the Debtors as to which checks, drafts, wires or ACH transfers are dated before, on, or after the Petition Date and which checks are to be honored or dishonored, regardless of whether or not such payment or honoring is or is not authorized by an order of this Court (but such check, draft, wire, or other transfer shall only be honored to the extent of available funds). No Bank shall incur any liability for relying upon any Debtor's instruction as to which checks, drafts, wires, or ACH transfers should be honored or dishonored or for such Bank's inadvertence in honoring any check, draft, wire, or ACH transfer at variance from the Debtors' instructions unless such inadvertence constituted gross negligence or willful misconduct on the part of such Bank. Each Debtor shall promptly provide a list of checks to each Bank for each Debtor Bank Account maintained at such Bank specifying, by check sequencing number, dollar amount, date of issue, and payee information, those checks that are to be dishonored by such Bank (the "**List of Checks to be Dishonored**"), which checks may include those issued after the Petition Date as well as those issued before the Petition Date that are not to be honored or paid according to any order of this Court, and each Bank may honor all other checks. Except for those checks, drafts, wires, or ACH transfers that are authorized or required to be honored under an order of this Court, the Debtors shall not instruct or request any Bank to pay or honor any check, draft, or other payment item issued on a Debtor Bank Account before the Petition Date but presented to such Bank for payment after the Petition Date. The Debtors shall include on the List of Checks to be Dishonored: (i) all pre-petition checks, drafts or other payment item issued on a Debtor Bank Account before the Petition Date that remain outstanding as of the Petition Date, other than those authorized or required to be honored under an order of this Court and (ii) all postpetition checks paying

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prepetition obligations, other than those that are authorized or required to be honored under an order of this Court.

8. Nothing contained herein shall prevent the Debtors from closing any Debtor Bank Accounts as they may deem necessary and appropriate, if consistent with the terms of any postpetition financing agreements and any orders of this Court relating thereto. Any relevant Bank is further authorized to honor the Debtors' requests to close such Debtor Bank Accounts, and the Debtors shall give notice of the closure of any account within ten (10) business days to the U.S. Trustee, counsel to any statutory committee appointed in these chapter 11 cases and counsel to the DIP Lenders (as defined in the DIP Orders).

9. For all Banks at which the Debtors maintain Debtor Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen (15) business days of the date of entry of this Interim Order, the Debtors shall (i) contact each such Bank, (ii) provide each such Bank with each of the Debtors' employee identification numbers, and (iii) identify each of their Debtor Bank Accounts held at such Banks as being held by a debtor in possession in a chapter 11 case.

10. For Banks that are not a party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall use their good faith efforts to cause the bank to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty five (45) days of the date of entry of this Order.

11. The Debtors are authorized, but not directed, to continue engaging in Ordinary Course Intercompany Transactions in connection with the Cash Management System in the ordinary course of business (including with respect to netting or setoffs permitted by section 553 of the Bankruptcy Code), but subject to the terms of the Debtors' DIP Credit

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Agreement (as defined in the DIP Orders); *provided, however*, that before the final order on this Motion, transfers from the Debtors to Non-Debtor Affiliates shall not exceed \$2 million.

12. The Debtors shall not be authorized by this Interim Order to undertake any Intercompany Transactions or set off mutual postpetition obligations relating to intercompany receivables and payables that are (i) not on the same terms as, or materially consistent with, the Debtors' operation of their business in the ordinary course of business during the prepetition period or (ii) prohibited or restricted by the terms of the DIP Orders. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all valid net postpetition Intercompany Transactions made in the ordinary course between Debtors shall be accorded administrative expense status, junior to any adequate protection claims granted under the DIP Orders.

13. Unless prohibited by applicable law, transfers made by a Debtor to a Non-Debtor Affiliate pursuant to a postpetition Intercompany Transaction shall be deemed a claim against, and loan to, such Non-Debtor Affiliate (and not a contribution of capital); *provided* that any transfers by a Non-Debtor Affiliate to a Debtor will reduce the claim against the Non-Debtor Affiliate and any such transfer shall be subject to the terms of the DIP Credit Agreement.

14. The Debtors shall maintain accurate and detailed records of all transactions and transfers, including Intercompany Transactions, within the Cash Management System, so that all postpetition transfers and transactions are readily ascertainable, traceable, recorded properly, and distinguished between prepetition and postpetition transactions.

15. The Banks are authorized to charge, and the Debtors are authorized, but not directed, to pay, honor, or allow, prepetition and postpetition fees, costs, charges, and expenses, including the Bank Fees, and charge back returned items, whether such items were deposited prepetition or postpetition, to the Debtor Bank Accounts in the ordinary course. Any such

postpetition fees, costs, charges, and expenses, including the Bank Fees, or charge-backs are not so paid shall be entitled to priority as administrative expense pursuant to section 503(b)(1) of the Bankruptcy Code.

16. The Debtors shall have forty-five (45) calendar days (or such additional time as the U.S. Trustee may agree to) from the Petition Date within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed to by the U.S. Trustee, and that such extension is without prejudice to the Debtors' right to request a further extension or waiver of the requirements of section 345(b) of the Bankruptcy Code.

17. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

18. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and postpetition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; (iii) the Budget (as defined in the DIP Orders); and (iv) the terms

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and conditions set forth in the Restructuring Support Agreement. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

19. Notwithstanding the Debtors' use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

20. Notwithstanding entry of this Interim Order, nothing herein shall (a) create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party or (b) alter or impair the validity, continuation, priority, enforceability, or perfection of any security interest or lien, in favor of any person or entity, that existed as of the Petition Date.

21. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

22. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

23. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

24. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served in accordance with Local Rules 5005-4 and 9036-1 upon the following parties: (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington,

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Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)). Further notice should be served upon; (i) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (Christina.brown@gibsondunn.com)), (ii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)) by **June 30, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

25. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

26. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: June 16th, 2020  
Wilmington, Delaware

  
MARY F. WALRATH  
10 UNITED STATES BANKRUPTCY JUDGE

**Appendix 1**

	<b>Entity</b>	<b>Bank Name</b>	<b>Account Number (XXXX)</b>	<b>Account Type</b>
<b>Debtor Bank Accounts</b>				
1	Skillsoft Corporation	Bank of America	XXXX9979	Operating
2	SumTotal Systems LLC	Silicon Valley Bank	XXXX2718	Lockbox
3	SumTotal Systems LLC	Wells Fargo Bank	XXXX4963	Lockbox
4	SumTotal Systems LLC	Silicon Valley Bank	XXXX2703	Operating
5	Skillsoft Canada Limited	Bank of America	XXXX4203	Operating
6	Skillsoft Canada Limited	Bank of America	XXXX4104	Operating
7	Skillsoft Limited	Bank of America	XXXX6034	Operating
8	Pointwell Limited	Bank of America	XXXX3019	Operating
9	Skillsoft Ireland Limited	Bank of America	XXXX1011	Operating
10	Skillsoft Ireland Limited	Bank of America	XXXX1029	Operating
11	Thirdforce Group Limited	Bank of America	XXXX1016	Operating
12	Skillsoft U.K. Limited	Bank of America	XXXX7017	Operating
13	Skillsoft U.K. Limited	Bank of America	XXXX7025	Operating
14	Skillsoft U.K. Limited	Bank of America	XXXX7033	Operating
15	Skillsoft U.K. Limited	Bank of America	XXXX7041	Operating
<b>Non-Debtor Bank Accounts</b>				
1	MindLeaders Ireland Learning Limited	Bank of America	XXXX4010	Operating
2	Skillsoft NETg GmbH	Bank of America	XXXX3013	Operating
3	Skillsoft NETg GmbH	Bank of America	XXXX0018	Operating
4	Skillsoft France SARL	Bank of America	XXXX1013	Operating

5	Skillsoft France SARL	Bank of America	XXXX1021	Operating
6	Skillsoft Group France SAS	Bank of America	XXXX8019	Operating
7	SumTotal Systems France SAS	Bank of America	XXXX1014	Operating
8	SumTotal Systems France SAS	Bank of America	XXXX1022	Operating
9	Skillsoft Digital (France) SAS	Bank of America	XXXX9018	Operating
10	SumTotal Systems Canada Limited	Bank of America	XXXX4106	Operating
11	SumTotal Systems Canada Limited	Bank of America	XXXX4205	Operating
12	SumTotal Systems U.K. Limited	Bank of America	XXXX2019	Operating
13	SumTotal Systems U.K. Limited	Bank of America	XXXX2035	Operating
14	SumTotal Systems U.K. Limited	Bank of America	XXXX2027	Operating
15	SumTotal Systems ANZ Pty. Ltd	Bank of America	XXXX3010	Operating
16	Skillsoft Asia Pacific Pty Ltd.	Bank of America	XXXX3015	Operating
17	Skillsoft Asia Pacific Pty Ltd.	Bank of America	XXXX3023	Operating
18	SumTotal Systems India Private Limited	CitiBank	XXXX25555	Operating
19	SumTotal Systems India Private Limited	CitiBank	XXXX45555	Operating
20	Skillsoft Asia Pacific Pte. Ltd.	Bank of America	XXXX1011	Operating
21	Skillsoft Asia Pacific Pte. Ltd.	Bank of America	XXXX1029	Operating
22	SumTotal Systems Japan	Mitsuisumitomo	XXXX7719	Operating
23	SumTotal Systems Japan	Mitsuisumitomo	XXXX3415	Operating
24	Skillsoft Software Services India Private Limited	Bank of America	XXXX7059	Operating
25	Skillsoft Software Services India Private Limited	Bank of America	XXXX7067	Operating

26	Skillsoft New Zealand Limited	Bank of America	XXXX1600	Operating
27	Element K India Private Limited	Bank of America	XXXX3012	Operating
28	Skillsoft (China) Ltd.	ICBC	XXXX1732	Operating
29	Skillsoft (China) Ltd.	ICBC	XXXX1821	Operating
30	Skillsoft (China) Ltd.	ICBC	XXXX2705	Operating

**Schedule "F"**

*Interim Order (I) Authorizing Debtors to (A) Continue to Maintain their Insurance Policies and Programs, (B) Honor all Insurance Obligations, and (C) Modify the Automatic Stay with Respect to the Workers' Compensation Program, and (II) Granting Related Relief*

*(See attached)*

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re: :  
: Chapter 11  
: SKILLSOFT CORPORATION, *et al.* : Case No. 20-11532 (MFW)  
: Debtors.<sup>1</sup> : (Jointly Administered)  
: : Re: D.I. 7  
----- X

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE TO MAINTAIN THEIR INSURANCE POLICIES AND PROGRAMS, (B) HONOR ALL INSURANCE OBLIGATIONS, AND (C) MODIFY THE AUTOMATIC STAY WITH RESPECT TO THE WORKERS' COMPENSATION PROGRAM, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of Skillsoft Corporation ("Skillsoft") and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), pursuant to sections 105(a), 362(d), 363, and 503(b) of title 11 of the United States Code (the "Bankruptcy Code"), for entry of an interim order (the "Interim Order") (i) authorizing, but not directing, the Debtors to (a) continue maintaining their Insurance Policies and Programs and (b) honor their Insurance Obligations in the ordinary course of business

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors' corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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during the administration of these chapter 11 cases, including paying any prepetition Insurance Obligations, including amounts owed to the Insurance Service Providers, (c) modify the automatic stay if necessary to permit the Debtors' employees to proceed with any claims they may have under the Workers' Compensation Program, and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the interim relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay and honor all prepetition obligations on account of the Insurance Obligations (including amounts owed to the Insurance Service Providers) arising under or relating to the Insurance Policies and Programs,

including any new Insurance Policies and Programs, without regard to whether such Insurance Policies and Programs are listed on Exhibit C to the Motion, and without regard to whether accruing or relating to the period before or after the Petition Date, on an interim basis without further order of the Court.

3. The Debtors are further authorized, but not directed, to maintain their Insurance Policies and Programs in accordance with practices and procedures that were in effect before the Petition Date.

4. The Debtors are authorized, but not directed, to revise, extend, supplement, or otherwise modify their insurance coverage as needed, including through the purchase or renewal of new or existing Insurance Policies and Programs.

5. The automatic stay is modified solely to the extent necessary to permit the Debtors' employees to proceed with any valid claims they may have under the Workers' Compensation Program, provided that any recovery on account of such claims is limited solely to the proceeds under the Debtors' applicable Insurance Policies and proceeds from non-Debtor sources.

6. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Insurance Obligations are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.



7. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of the Insurance Obligations, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

8. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted here, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or postpetition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; and (iii) the Approved Budget (as defined in the DIP Orders). To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

9. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

10. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

Handwritten signature or initials, possibly "LTS", in black ink.

11. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

12. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

13. Notwithstanding Bankruptcy Rules 4001(a)(3) and 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

14. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served in accordance with Local Rules 5005-4 and 9036-1 upon the following parties: (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)). Further notice should be served upon; (i) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (Christina.brown@gibsondunn.com)), (ii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)) by **June 30, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

15. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

Dated: June 16th, 2020  
Wilmington, Delaware

RLF1 23576813v.1

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MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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**Schedule "G"**

*Interim Order (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Fees, and (II)  
Granting Related Relief*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
In re: :  
: Chapter 11  
: SKILLSOFT CORPORATION, *et al.* : Case No. 20-11532 (MFW)  
: Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
: Re: D.I. 3  
----- X

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN  
PREPETITION TAXES AND FEES, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for entry of orders (i) authorizing the Debtors to pay the Taxes and Fees, and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the interim relief requested in the Motion (the "**Hearing**"); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Rule 6003 of the Federal Rules of Bankruptcy Procedure, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay and honor all prepetition obligations on account of the Taxes and Fees as such obligations become due to the Authorities, in amounts not to exceed \$1,100,000.00 in the aggregate on an interim basis.
3. The Debtors are further authorized, but not directed, to continue paying the Taxes and Fees in accordance with practices and procedures that were in effect before the Petition Date.
4. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Taxes and Fees are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other

*PLS*

order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

5. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of the Taxes and Fees as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

6. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or postpetition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders). To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Interim Order to, or on behalf of, a non-Debtor affiliate except as permitted by the Approved Budget.

7. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any

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agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

8. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

9. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

10. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

11. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

12. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served in accordance with Local Rules 5005-4 and 9036-1 upon the following parties: (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)). Further notice should be served upon (i) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (Christina.brown@gibsondunn.com)), (ii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com)),

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Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)) by **June 30, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

13. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

14. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

Dated: June 16th, 2020  
Wilmington, Delaware

RLF1 23576788V.1



MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Schedule "H"**

*Interim Order (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining Adequate Assurance of Payment for Future Utility Services, (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
In re: :  
: Chapter 11  
: :  
SKILLSOFT CORPORATION, *et al.* : Case No. 20-11532 (MFW)  
: :  
Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
: Re: D.I. 6  
----- X

**INTERIM ORDER (I) APPROVING  
DEBTORS' PROPOSED FORM OF ADEQUATE  
ASSURANCE OF PAYMENT TO UTILITY PROVIDERS,  
(II) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE  
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES,  
(III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR  
DISCONTINUING UTILITY SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of Skillsoft Corporation ("Skillsoft") and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), pursuant to sections 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code"), for entry of an order (i) approving the Debtors' proposed form of adequate assurance of payment for Utility Providers, (ii) establishing procedures for determining adequate assurance of payment for future utility services, (iii) prohibiting Utility Providers from altering, refusing, or discontinuing utility service on account of the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors' corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.



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commencement of these chapter 11 cases and/or outstanding prepetition invoices, and (iv) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b), and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the relief sought in the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the interim relief requested in the Motion (the “Hearing”); and upon the First Day Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted on an interim basis to the extent set forth herein.
2. Absent compliance with the procedures set forth in the Motion and this Interim Order, the Debtors’ utility providers (the “Utility Providers”) are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11

cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

3. Funds held in the Adequate Assurance Account and any Adequate Assurance Deposit shall be returned to the Debtors upon the effective date of a chapter 11 plan for the Debtors or such other time as these cases may be closed without further Court order; provided, that there are no outstanding disputes related to postpetition payments due.

4. The Adequate Assurance Deposit, in conjunction with the Debtors' cash on hand, cash flow from operations, and their proposed use of cash collateral and debtor-in-possession financing, demonstrate the Debtors' ability to pay for future utility services in the ordinary course of business (together, the "**Proposed Adequate Assurance**") and constitute sufficient adequate assurance to the Utility Providers.

5. The following Adequate Assurance Procedures are hereby approved in the entirety on an interim basis:

- a. The Debtors will mail a copy of the Motion and this Interim Order, which include the Adequate Assurance Procedures, to each Utility Provider within two (2) business days after entry of this Interim Order.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within twenty (20) calendar days after entry of this Interim Order; provided that to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value upon the agreement of such Utility Provider.
- c. Any Utility Provider seeking additional assurances of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an "**Additional Assurance Request**") so that it is actually received by all of the Adequate Assurance Parties (as defined below) at the following addresses: (i) Skillsoft Corporation, 300 Innovative Way, Suite 201, Nashua, New Hampshire 03062 (Attn.: Gregory Porto); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn.: Robert J. Lemons, Esq., Katherine Theresa Lewis, Esq., and Daniel R. Sotsky, Esq.); (iii) Richards, Layton & Finger, P.A.,

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920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and Amanda R. Steele, Esq.); and (iv) counsel to WSFS, in its capacity as DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Gregg S. Bateman, Esq.) (collectively, the "Adequate Assurance Notice Parties").

- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. If a Utility Provider fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request, such Utility Provider shall be (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors' chapter 11 cases and/or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- f. Upon receipt of any Additional Assurance Request as provided herein, the Debtors shall promptly negotiate with such Utility Provider to resolve such its Additional Assurance Request.
- g. The Debtors may, in their sole discretion and without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, which may include, but is not limited to, cash deposits, payments of any outstanding prepetition balance due to the Utility Provider, prepayments or other forms of security, in each case, without further order of the Court.
- h. If the Debtors are not able to reach a resolution with a Utility Provider that has submitted an Adequate Assurance Request, the Debtors will request a hearing before the Court to determine the adequacy of assurance of payment with respect to the Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.
- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider is prohibited from discontinuing, altering or refusing service to the Debtors on account of the commencement of these chapter 11 cases, any unpaid charges for prepetition services provided to

any of the Debtors by the Utility Provider, or any objections to the Adequate Assurance.

- j. Absent compliance with the Adequate Assurance Procedures and the terms of this Interim Order, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

6. The Debtors are authorized, in their sole discretion, to amend the utility service list attached as **Exhibit B** to the Motion (the "Utility Service List") to add or delete any Utility Provider, and this Interim Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with the Court.

7. The inclusion of any entity in, or the omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtors that such entity is or is not a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Interim Order on the subsequently added Utility Provider and deposit two (2) weeks' worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider, and any such subsequently added entities shall make an Additional Assurance Request in accordance with the Adequate Assurance Procedures.

9. The Debtors may terminate the services of any Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Provider.

10. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

11. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

13. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

14. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

15. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served in accordance with Local Rules 5005-4 and 9036-1 upon the following parties: (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com)); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq.



(katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)). Further notice should be served upon: (i) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (Christina.brown@gibsondunn.com)), (ii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)) by **June 30, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

16. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

17. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Interim Order.

Dated: June 16th, 2020  
Wilmington, Delaware



MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Schedule "I"**

*Interim Order (I) Authorizing the Debtors to Pay Prepetition Trade Claims in Ordinary Course of Business and (II) Granting Related Relief*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
In re: :  
: Chapter 11  
: :  
SKILLSOFT CORPORATION, *et al.* : Case No. 20-11532 (MFW)  
: :  
Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
: Re: D.I. 9  
----- X

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS  
TO PAY PREPETITION TRADE CLAIMS IN ORDINARY COURSE  
OF BUSINESS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105(a), 363(b), and 503(b)(9) of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for an order (i) authorizing the Debtors to pay the prepetition Trade Claims in the ordinary course of business and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware,

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the interim relief requested in the Motion (the “Hearing”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Rule 6003 of the Bankruptcy Rules, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted on an interim basis to the extent set forth herein.

1. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), 363(c), and 503(b)(9) of the Bankruptcy Code, in the reasonable exercise of their business judgment, to pay, in the ordinary course of business, some or all of the prepetition Trade Claims of Trade Creditors in full; provided that the Debtors are authorized, but not directed, to pay only amounts due and payable as of the Petition Date and amounts that are or become due and payable between the Petition Date and the date that a final order on the Motion is entered, in an aggregate amount not to exceed \$18.0 million, unless otherwise ordered by this Court; and in all cases subject to the following:

- (a) The Debtors, in their sole discretion, subject to the limitations set forth below, shall determine which Trade Claims, if any, will be paid pursuant to this Interim Order.
- (b) Before making a payment to a creditor under this Interim Order, the Debtors may, in their discretion, settle all or some of the prepetition claims of such creditor for

less than their face amount without further notice or hearing.

2. The undisputed obligations of the Debtors arising under the Prepetition Purchase Orders shall be afforded administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code.

3. The Debtors are authorized, but not directed, pursuant to section 363(c)(1) of the Bankruptcy Code, to pay in the ordinary course of their businesses all undisputed obligations arising from the postpetition delivery or shipment of goods or provision of services under the Prepetition Purchase Orders consistent with their customary past practice; *provided* that such actions are in compliance with, and not prohibited by, the terms of the DIP Orders (as defined below) and other documentation governing the Debtors' use of cash collateral and postpetition financing facilities, including, without limitation, the DIP Credit Agreement (as defined in the DIP Orders).

4. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

5. The Debtors are further authorized, but not directed, to issue postpetition checks, or to effect postpetition funds transfer requests, in replacement of any checks or funds transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Interim Order.

6. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or postpetition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders).

7. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

8. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

9. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

10. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

11. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

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12. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

13. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)). Further notice shall be served upon (i) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (Christina.brown@gibsondunn.com)), (ii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)) so as to be received by no later than **4:00 p.m. (prevailing Eastern Time) on June 30, 2020.**

14. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

15. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

Dated: June 16th, 2020  
Wilmington, Delaware



MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE





**Schedule "J"**

*Interim Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Reimbursable Expenses, and Other Obligations on Account of Compensation and Benefits Programs and (B) Continue Compensation and Benefits Programs and (II) Granting Related Relief*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
In re: :  
: Chapter 11  
: SKILLSOFT CORPORATION, *et al.* :  
: Case No. 20-11532 (MFW)  
: Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
: Re: D.I. 4  
----- X

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO  
(A) PAY PREPETITION WAGES, SALARIES, REIMBURSABLE EXPENSES, AND  
OTHER OBLIGATIONS ON ACCOUNT OF COMPENSATION AND BENEFITS  
PROGRAMS AND (B) CONTINUE COMPENSATION AND BENEFITS PROGRAMS  
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for entry of interim and final orders (i) authorizing the Debtors to (a) pay prepetition wages, salaries, reimbursable expenses, and other obligations on account of the Compensation and Benefits Programs in the ordinary course of business as provided in the Motion and (b) continue to administer the Compensation and Benefits Programs and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.



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*Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the interim relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Rule 6003 of the Federal Rules of Bankruptcy Procedure, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay and honor all prepetition obligations, including processing and administrative fees, on account of the Compensation and Benefits Programs in amounts not to exceed \$2,665,614 in the aggregate on an interim basis; provided that, pending entry of an order granting the relief requested in the Motion on a final basis, the Debtors shall not pay or honor any prepetition obligations on account of the Non-Insider Employee Incentive Programs.

3. Payments for prepetition obligations on account of Compensation or Paid Time Off each shall not exceed the statutory caps set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

4. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Deductions and Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

5. The Debtors are authorized, but not directed, to continue to administer the Compensation and Benefits Programs in the ordinary course of business; provided that, pending entry of an order granting the relief requested in the Motion on a final basis, the Debtors shall not pay any obligations arising under the Non-Insider Employee Incentive Programs.

6. The Debtors are authorized, but not directed, to modify, change, and discontinue any of their Compensation and Benefits Programs and to implement new programs, policies, and benefits in the ordinary course of business during these chapter 11 cases, in their discretion and without the need for further Court approval, subject to applicable orders entered in these chapter 11 cases, any agreements executed in contemplation of these chapter 11 cases, and the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

7. Nothing herein shall be deemed to (a) authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code, including any bonus or severance obligations, or (b) authorize the Debtors to cash out unpaid Paid Time Off upon termination of an Employee, unless applicable nonbankruptcy law requires such payment; provided that nothing in this Interim Order shall prejudice the Debtors' ability to seek approval of such relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

8. Each of the Banks at which the Debtors maintain their accounts relating to the payment of obligations on account of the Compensation and Benefits Programs are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of obligations in connection with the Compensation and Benefits Programs as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

10. The payroll processors are authorized to honor and pay all checks presented for payment and electronic payment requests relating to the Compensation and Benefits Programs to the extent directed by the Debtors in accordance with this Interim Order, whether such checks were presented or electronic requests were submitted before or after the Petition Date.

11. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or postpetition debtor-in-possession financing facilities (collectively,

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the “DIP Orders”); (ii) other documentation governing the Debtors’ use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders). To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Interim Order to, or on behalf of, a non-debtor affiliate except as permitted by the Budget.

12. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

13. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

14. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

15. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

16. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

17. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)**

and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)). Further notice shall be served upon (i) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (Christina.brown@gibsondunn.com)), (ii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)) so as to be received by no later than **4:00 p.m. (prevailing Eastern Time) on June 30, 2020.**

18. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

19. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

Dated: June 16th, 2020  
Wilmington, Delaware

  
MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Schedule "K"**

*Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying Automatic Stay, (V) Scheduling Final Hearing, and (VI) Granting Related Relief*

*(See attached)*



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	)	Chapter 11
	)	)	
SKILLSOFT CORPORATION, <i>et al.</i> <sup>1</sup>	)	)	Case No. 20-11532 (MFW)
	)	)	
Debtors.	)	)	(Jointly Administered)
	)	)	
	)	)	Re: Docket No. 19

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN  
POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL,  
(II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE  
EXPENSE CLAIMS, (III) GRANTING ADEQUATE PROTECTION TO  
PREPETITION SECURED PARTIES, (IV) MODIFYING AUTOMATIC STAY,  
(V) SCHEDULING FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) in the above captioned chapter 11 cases (collectively, the “**Cases**”) for entry of an interim order (this “**Interim Order**”), pursuant to sections 105, 361, 362, 363, 364, 507, and 552 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 2002-1(b), 4001-2, 9006-1, and 9013 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), seeking entry of this interim order (this “**Interim Order**”) and:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion or the DIP Credit Agreement (defined below), as applicable.

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(i) authorizing Skillsoft Corporation, in its capacity as borrower (the “**Borrower**”), to obtain postpetition financing consisting of a senior secured super-priority term loan credit facility in the aggregate amount of \$60,000,000 (such facility, the “**DIP Facility**” and the loans thereunder, the “**DIP Loans**”) and authorizing each of the other Debtors (the “**Guarantors**”) to guarantee unconditionally, on a joint and several basis, the Borrower’s obligation in connection with the DIP Facility, each in accordance with the terms and conditions set forth in the DIP Credit Agreement (defined below) and the terms and conditions set forth in the DIP Documents (defined below), upon entry of the Interim Order and subject to the terms of the Final Order (as defined in the DIP Credit Agreement);

(ii) authorizing the Debtors to enter into that certain Senior Secured Super-Priority Debtor-In-Possession Credit Agreement substantially in the form attached hereto as Exhibit 2, among Pointwell Limited, a corporation organized under the laws of Ireland, as parent, the Borrower, the Lenders party thereto (in such capacity, collectively, the “**DIP Lenders**”), and Wilmington Savings Fund Society, FSB, as Administrative Agent (in such capacity, the “**DIP Administrative Agent**”), Collateral Agent (in such capacity, the “**DIP Collateral Agent**” and, together with the DIP Administrative Agent, the “**DIP Agent**”), and Escrow Agent (in such capacity, the “**DIP Escrow Agent**” and, together with the DIP Administrative Agent, the DIP Collateral Agent and the DIP Lenders, the “**DIP Secured Parties**”) (as the same may be amended, restated, supplemented, amended and restated, waived or otherwise modified from time to time, the “**DIP Credit Agreement**” and, together with the schedules and exhibits attached thereto, this Interim Order, the Final Order, and all agreements, documents, and instruments delivered or executed in connection therewith (including the Fee Letter (as defined in the DIP Credit Agreement) executed by the Borrower in connection with the DIP Facility, and

other guarantee and security documentation, collectively, the “DIP Documents”), and to perform such other and further acts as may be required in connection with the DIP Documents;

(iii) authorizing the Debtors to use the DIP Loans, the proceeds thereof, and the Prepetition Collateral (defined below), including Cash Collateral (defined below), in accordance with the Initial Approved Budget (as defined in the DIP Credit Agreement and attached hereto as Exhibit 1) (subject to the permitted variances set forth in the DIP Credit Agreement), and subsequently Approved Budgets, to provide working capital for, and for the other general corporate purposes of, the Debtors, including chapter 11 expenses, the operations of certain non-Debtor subsidiaries through “on-lending” or contributions of capital, Adequate Protection Payments (defined below), and reasonable and documented out-of-pocket transaction costs, fees, and expenses incurred in connection with the restructuring contemplated to be implemented through the Cases in accordance with the RSA (as defined in the DIP Credit Agreement);

(iv) granting adequate protection to the Prepetition Secured Parties (defined below) to the extent of any Diminution in Value (defined below) of their interests in the Prepetition Collateral;

(v) granting to the DIP Agent, for the benefit of the DIP Secured Parties to secure the DIP Obligations (defined below), valid, enforceable, binding, non-avoidable, and fully perfected first priority priming liens on, and senior security interests in, all of the DIP Collateral (defined below), subject only to (x) the Carve Out (defined below) and (y) other valid, perfected and unavoidable liens (other than the Prepetition Liens (defined below)) that are senior to the Prepetition Liens, if any, existing as of the Petition Date (or perfected after the Petition Date to the

extent permitted by section 546(b) of the Bankruptcy Code) on the terms and conditions set forth herein and in the DIP Documents (any such liens, the “**Existing Senior Liens**”);<sup>3</sup>

(vi) granting superpriority administrative expense claims against each of the Debtors’ estates to the DIP Agent, the DIP Escrow Agent, and the DIP Lenders with respect to the DIP Obligations (defined below) with priority over any and all administrative expenses of any kind or nature and subject and subordinate only to the payment of the Carve Out on the terms and conditions set forth herein and in the DIP Documents;

(vii) subject to entry of the Final Order granting such relief, and to the extent set forth herein, waiving certain of the Debtors’ and the Debtors’ estates’ right to surcharge against the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code;

(viii) subject to entry of the Final Order granting such relief, and to the extent set forth herein, providing that the “equities of the case” exception under section 552(b) of the Bankruptcy Code not apply to the DIP Agent, the DIP Escrow Agent, the DIP Lenders, and the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;

(ix) pursuant to Bankruptcy Rule 4001, holding an interim hearing (the “**Interim Hearing**”) on the Motion before this Court to consider entry of this Interim Order to, among other things, (1) authorize the Borrower to, on an interim basis, borrow from the DIP Lenders a principal amount of \$60,000,000 in DIP Loans, (2) authorize the Guarantors to guaranty the DIP Obligations, (3) authorize the Debtors’ use of Prepetition Collateral (including Cash

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<sup>3</sup> Nothing in this Interim Order shall constitute a finding or ruling by this Court that any such prepetition liens are valid, senior, perfected, and/or unavoidable. Moreover, nothing in this Interim Order shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the DIP Secured Parties, and/or the Committee to challenge the validity, priority, perfection and extent of any such prepetition liens.

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Collateral), (4) grant the adequate protection described in this Interim Order, and (5) authorize the Debtors to execute and deliver the DIP Documents to which they are a party and to perform their respective obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(x) scheduling a final hearing (the “**Final Hearing**”) within twenty-five (25) days of the Petition Date to consider the relief requested in the Motion and the entry of the Final Order;

(xi) approving the form of notice with respect to the Final Hearing; and

(xii) granting related relief.

This Court having considered the Motion, the exhibits thereto, the *Declaration of John Frederick in Support of Debtors’ Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”), the *Declaration of Christopher A. Wilson in Support of the Debtors’ Motion for Entry of Orders (I) Authorizing Debtors to (A) Obtain Postpetition Senior Secured Superpriority Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Granting Liens and Superpriority Claims (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the “**Wilson Declaration**”), and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing held pursuant to Bankruptcy Rule 4001(b)(2) on June 16, 2020; and this Court having heard and resolved or overruled on the merits any objections, reservations of rights, or other statements with respect to the relief requested in the Motion; and this Court having noted the appearances of parties in interest; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and the Debtors having provided notice of the Motion as set forth in the Motion, and it appearing that

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no other or further notice of the Motion need be given; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>**

A. Petition Date. On June 14, 2020 (the “**Petition Date**”), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware commencing these Cases.

B. Debtors in Possession. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution.

D. Committee. As of the date hereof, no official committee of unsecured creditors has been appointed in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “**Committee**”).

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<sup>4</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law, pursuant to Bankruptcy Rules 7052 and 9014.

E. Debtors' Stipulations. Without prejudice to the rights of parties in interest with standing other than the Debtors, but subject to the limitations thereon contained in Paragraphs 12 and 26 of this Interim Order, the Debtors represent, admit, stipulate, and agree (subsections (i) through (v) below, collectively, the “Debtors’ Stipulations”) that:

(i) Prepetition Indebtedness.

(a) The Prepetition First Lien Lenders (defined below), under that certain First Lien Credit Agreement dated as of April 28, 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Prepetition First Lien Credit Agreement**” and, together with the “Credit Documents” (as defined in the Prepetition First Lien Credit Agreement), the “**Prepetition First Lien Credit Documents**”; the term loans issued under the Prepetition First Lien Credit Agreement, the “**Prepetition First Lien Term Loans**”; the revolving loans issued thereunder, the “**Prepetition First Lien Revolving Loans**” and, together with the Prepetition First Lien Term Loans, the “**Prepetition First Lien Debt**”), by and among among Evergreen Skills Intermediate Lux S.à r.l. (“**Holdings**”), Evergreen Skills Lux S.à r.l. (the “**Lux Borrower**”), the Borrower, Skillsoft Canada, Ltd. (the “**Canadian Borrower**”; the Lux Borrower, the Borrower, and the Canadian Borrower collectively, the “**First Lien Borrowers**”), the lenders party thereto from time to time (the “**Prepetition First Lien Lenders**”), Wilmington Savings Fund Society, FSB, as the administrative agent (the “**Prepetition First Lien Administrative Agent**”) and collateral agent (the “**Prepetition First Lien Collateral Agent**” and, together with the Prepetition First Lien Administrative Agent, the “**Prepetition First Lien Agent**”; the Prepetition First Lien Agent together with the Prepetition First Lien Lenders, the “**Prepetition First Lien Secured Parties**”), and the other parties thereto from time to time, provided the First Lien Borrowers with Prepetition First Lien Term Loans in the aggregate

principal amount of \$900,000,000 and commitments for Prepetition First Lien Revolving Loans in the aggregate principal amount of \$100,000,000.

(b) The Prepetition Second Lien Lenders (defined below), under that certain Second Lien Credit Agreement dated as of April 28, 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Prepetition Second Lien Credit Agreement**” and, together with the Prepetition First Lien Credit Agreement, the “**Prepetition Credit Agreements**”; the “**Credit Documents**” (as defined in the Prepetition Second Lien Credit Agreement), the “**Prepetition Second Lien Credit Documents**” and, together with the Prepetition First Lien Credit Documents, the “**Prepetition Credit Documents**”; the term loans issued under the Prepetition Second Lien Credit Agreement, the “**Prepetition Second Lien Term Loans**” and, together with the Prepetition First Lien Debt, the “**Prepetition Indebtedness**”), by and among among Holdings, Evergreen Skills Lux S.à r.l., the Lux Borrower, the Borrower (the Lux Borrower together with the Borrower, the “**Second Lien Borrowers**”), the lenders party thereto from time to time (the “**Prepetition Second Lien Lenders**” and, together with the Prepetition First Lien Lenders, the “**Prepetition Secured Lenders**”), Wilmington Savings Fund Society, FSB, as the administrative agent (in such capacity, the “**Prepetition Second Lien Administrative Agent**”) and collateral agent (in such capacity, the “**Prepetition Second Lien Collateral Agent**” and, together with the Prepetition Second Lien Administrative Agent, the “**Prepetition Second Lien Agent**”; the Prepetition Second Lien Agent together with the Prepetition First Lien Agent, the “**Prepetition Agents**”; the Prepetition Agents together with the DIP Agent and the DIP Escrow Agent, the “**Agents**”); the Prepetition Second Lien Agent together with the Prepetition Second Lien Lenders, the “**Prepetition Second Lien Secured Parties**”; the Prepetition Second Lien Secured Parties together with the Prepetition First Lien Secured Parties,

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the “Prepetition Secured Parties”), and the other parties thereto from time to time, provided the Second Lien Borrowers with Prepetition Second Lien Term Loans in the aggregate principal amount of \$485,000,000.

(c) On September 30, 2014, pursuant to the terms of that certain Amended and Restated First Lien Joinder Agreement and an amendment to the Prepetition First Lien Credit Agreement, the First Lien Borrowers obtained \$465,000,000 in New Term Loans (as defined in the Prepetition First Lien Credit Agreement).

(d) On September 30, 2014, pursuant to the terms of that certain Amended and Restated Second Lien Joinder Agreement and an amendment to the Prepetition Second Lien Credit Agreement, the Second Lien Borrowers obtained \$185,000,000 in New Term Loans (as defined in the Prepetition Second Lien Credit Agreement).

(e) On August 24, 2018, pursuant to an amendment to the Prepetition First Lien Credit Agreement, the First Lien Borrowers reduced the aggregate Revolving Credit Commitments of all Revolving Credit Lenders (each as defined in the Prepetition First Lien Credit Agreement) from \$100,000,000 to \$90,000,000.

(f) On or about March 27, 2019 the Company (i) prepaid \$10,000,000 of the aggregate principal amount of outstanding Revolving Credit Loans and (ii) terminated \$10,000,000 of the aggregate principal amount of outstanding Revolving Credit Commitments (each as defined in the Prepetition First Lien Credit Agreement) thereby reducing the First Lien Borrowers’ obligations pursuant to the Prepetition First Lien Credit Agreement from \$90,000,000 to \$80,000,000.

(g) As of the Petition Date, the Debtors, without defense, counterclaim, or offset of any kind, were jointly and severally indebted to the Prepetition First Lien Secured

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Parties pursuant to the Prepetition First Lien Credit Documents, for Prepetition First Lien Term Loans in the aggregate principal amount of approximately \$1,290,000,000 and Prepetition First Lien Revolving Loans in the aggregate principal amount of approximately \$79,500,000, *plus*, with respect to each, accrued and unpaid interest with respect thereto and any additional fees, costs, expenses (including any attorneys', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition First Lien Credit Agreement) owing under the Prepetition First Lien Credit Documents (collectively, the "**Prepetition First Lien Obligations**").

(h) As of the Petition Date, the Debtors, without defense, counterclaim, or offset of any kind, were jointly and severally indebted to the Prepetition Second Lien Secured Parties pursuant to the Prepetition Second Lien Credit Documents, for Prepetition Second Lien Term Loans in the aggregate principal amount of approximately \$670,000,000 *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, expenses (including any attorneys', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Second Lien Credit Agreement) owing under the Prepetition Second Lien Credit Documents (collectively, the "**Prepetition Second Lien Obligations**" and, together with the Prepetition First Lien Obligations, the "**Prepetition Obligations**").

(ii) *Prepetition Indebtedness Collateral.*

(a) In connection with the Prepetition First Lien Credit Agreement, the Debtors entered into that certain First Lien Security Agreement, dated as of April 28, 2014 (as

amended, restated, amended and restated, supplemented or otherwise modified from time to time, the **“Prepetition First Lien Security Agreement”**), by and between the First Lien Borrowers, the other Credit Parties (as defined in the Prepetition First Lien Credit Agreement) party thereto, and the Prepetition First Lien Collateral Agent. Pursuant to the Prepetition First Lien Security Agreement and the other Prepetition First Lien Credit Documents, the Prepetition First Lien Obligations are secured by valid, binding, perfected first-priority security interests in and liens (the **“Prepetition First Lien Revolving and Term Loan Liens”**) on the **“Collateral”** (the **“Prepetition Collateral”**), as defined in the Prepetition First Lien Security Agreement, consisting of substantially all of the Debtors’ assets, except as may be set forth in the Prepetition First Lien Security Agreement.

(b) In connection with the Prepetition Second Lien Credit Agreement, the Debtors entered into that certain Second Lien Security Agreement, dated as of April 28, 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the **“Prepetition Second Lien Security Agreement”** and, together with the Prepetition First Lien Security Agreement, the **“Prepetition Security Agreements”**), by and between the Second Lien Borrowers, the other Credit Parties (as defined in the Prepetition Second Lien Credit Agreement) party thereto, and the Prepetition Second Lien Collateral Agent. Pursuant to the Prepetition Second Lien Security Agreement and the other Prepetition Second Lien Credit Documents, the Prepetition Second Lien Obligations are secured by valid, binding, perfected second-priority security interests in and liens (the **“Prepetition Second Lien Term Loan Liens”** and, together with the Prepetition First Lien Revolving and Term Loan Liens, the **“Prepetition Liens”**) on the Prepetition Collateral.

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(iii) Cash Collateral. Any and all of the Debtors' cash, including (i) amounts on deposit or maintained in any account or accounts by the Debtors, (ii) any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral existing as of the Petition Date, and (iii) the proceeds of any of the foregoing is the Prepetition Secured Parties' cash collateral within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral").

(iv) Bank Accounts. The Debtors acknowledge and agree that as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system (the "Cash Management Order").

(v) Validity, Perfection, and Priority of Prepetition Liens and Prepetition Obligations. Subject to the Challenge Period (defined below), each of the Debtors acknowledges and agrees that: (A) as of the Petition Date, the Prepetition Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral; (B) as of the Petition Date, the Prepetition Liens are subject and/or subordinate only to valid, perfected, and unavoidable liens and security interests existing as of the Petition Date that are senior in priority to the Prepetition Liens as permitted by the terms of the Prepetition Credit Documents; (C) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (D) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, defense, counterclaims, cross-claims, or "claim" (as defined in the

Bankruptcy Code), pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (E) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition Agents, the Prepetition Secured Parties, or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to the Prepetition Indebtedness under the Prepetition Credit Documents, the Prepetition Obligations, or the Prepetition Liens; provided, however, that notwithstanding anything to the contrary in this Interim Order, the Debtors do not agree or acknowledge that the Prepetition Liens are perfected on cash in any accounts with institutions that are not the Prepetition Agents or Prepetition Secured Parties.

F. *Findings Regarding the DIP Facility and Use of Cash Collateral.*

(i) The Debtors have an immediate need to obtain the funds available under the DIP Facility and to use Cash Collateral (solely to the extent consistent with the Approved Budget (subject to permitted variances as set forth in this Interim Order and the DIP Documents)) to, among other things, (A) permit the orderly continuation of their businesses; (B) make certain Adequate Protection Payments; and (C) pay the costs of administration of their estates and satisfy their other working capital and general corporate purposes during the pendency of these Cases. Specifically, the proceeds of the DIP Loans will provide the Debtors with the ability to fund day-to-day operations and meet administrative obligations during the Cases. The DIP Facility will

also reassure the Debtors' customers and employees that the Debtors will have access to additional liquidity to meet their commitments during the Cases and that the Debtors' businesses will continue as a going concern post-emergence. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' going concern value and successful reorganization. The Debtors will not have sufficient sources of working capital and financing to operate their businesses in the ordinary course of business throughout the Cases without access to the DIP Facility and authorized use of Cash Collateral.

(ii) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Documents without the Debtors granting to the DIP Secured Parties, subject to the Carve Out as provided for herein, the DIP Liens (defined below) and the DIP Superpriority Claims (defined below) under the terms and conditions set forth in this Interim Order and the DIP Documents.

(iii) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents including, without limitation, all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and all other obligations under the DIP Documents (collectively, the "**DIP Obligations**") shall be deemed to have been extended by the DIP Secured Parties in good faith as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon

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the protections offered by section 364(e) of the Bankruptcy Code. The DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, and any liens or claims granted to, or payments made to, the DIP Agent, the DIP Escrow Agent, or the DIP Lenders hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

(iv) Sections 506(c) and 552(b). In light of the Prepetition Secured Parties' agreement to subordinate their liens and superpriority claims to the DIP Obligations and the Carve Out and to permit the use of their Cash Collateral as set forth herein, the Prepetition Secured Parties are entitled to the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and upon entry of the Final Order granting such relief, (i) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(v) Consent by Prepetition Agents. The Prepetition First Lien Agent (at the direction of the Required Lenders (as defined in the Prepetition First Lien Credit Agreement (the "**Required Prepetition First Lien Lenders**")), on behalf of and for the benefit of each of the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Agent (at the direction of the Required Lenders (as defined in the Prepetition Second Lien Credit Agreement (the "**Required Prepetition Second Lien Lenders**")), on behalf of and for the benefit of each of the Prepetition Second Lien Secured Parties, have consented to, conditioned on the entry of this Interim Order, the Debtors' incurrence of the DIP Facility and proposed use of Cash Collateral on the terms and

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conditions set forth in this Interim Order and the terms of the adequate protection provided for in this Interim Order, including that the Adequate Protection Liens and Adequate Protection Superpriority Claims are subject and subordinate to the Carve Out.

G. Good Cause Shown; Best Interest. Good cause has been shown for entry of this Interim Order, and entry of this Interim Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing business and enhance the Debtors' prospects for a successful reorganization. Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed.

H. Notice. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and applicable Local Rules.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. DIP Financing Approved. The Motion is granted on an interim basis as set forth herein, and the use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.

2. Objections Overruled. Any objections, reservations of rights, or other statements with respect to entry of the Interim Order, to the extent not withdrawn or resolved, are overruled on the merits. This Interim Order shall become effective immediately upon its entry.

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3. Authorization of the DIP Facility and the DIP Documents.

(a) The Debtors are hereby immediately authorized and empowered to enter into, and to execute and deliver, the DIP Documents, and such additional documents, instruments, certificates and agreements as may be reasonably required or requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents. To the extent not entered into as of the date hereof, the Debtors and the DIP Secured Parties shall negotiate the DIP Documents in good faith, and in all respects such DIP Documents shall be consistent with the terms of the DIP Credit Agreement and otherwise reasonably acceptable to the DIP Agent, the DIP Escrow Agent, and the Required Lenders (as defined in the DIP Credit Agreement, the "Required DIP Lenders"). Upon entry of this Interim Order and until execution and delivery of the DIP Credit Agreement and the other DIP Documents, the Debtors and the DIP Secured Parties shall be bound by (x) the terms and conditions and other provisions set forth in the executed DIP Documents, and (y) this Interim Order, which shall govern and control the DIP Facility. Upon entry of this Interim Order, the Interim Order, the DIP Credit Agreement, and other DIP Documents shall govern and control the DIP Facility. The DIP Agent and the DIP Escrow Agent are hereby authorized to execute and enter into its respective obligations under the DIP Documents, subject to the terms and conditions set forth therein and this Interim Order. Upon execution and delivery thereof, the DIP Documents shall constitute valid and binding obligations of the Debtors enforceable in accordance with their terms. To the extent there exists any conflict among the terms and conditions of the Motion, the DIP Documents, and this Interim Order, the terms and conditions of this Interim Order shall govern and control. To the extent there is a conflict between the terms and conditions of the Motion and the DIP Documents, the terms and conditions of the DIP Documents shall govern.

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(b) Upon entry of this Interim Order, the Borrower is hereby authorized to borrow, and the Guarantors are hereby authorized to guaranty, borrowings up to an aggregate principal amount of \$60,000,000 in DIP Loans into an escrow account, of which up to \$30,000,000 in DIP Loans may be drawn prior to entry of the Final Order, subject to and in accordance with the terms of this Interim Order and the DIP Documents.

(c) The proceeds of the DIP Loans shall be used solely for the purposes permitted under the DIP Documents and this Interim Order, and in accordance with the Approved Budget, subject to permitted variances as set forth in this Interim Order and the DIP Documents. Attached as Exhibit 1 hereto and incorporated herein by reference is the Initial Approved Budget prepared by the Debtors and approved by the Required DIP Lenders in accordance with Section 9.18 of the DIP Credit Agreement.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted to the extent necessary to perform all acts and to make, execute, and deliver all instruments and documents, and to pay all fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Documents including, without limitation:

(1) the execution, delivery, and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement, any guaranty, security and pledge agreement, and any mortgage to the extent contemplated thereby;

(2) the execution, delivery, and performance of one or more amendments, waivers, consents, or other modifications to and under the DIP Documents (in each case in accordance with the terms of the applicable DIP Documents and in such form as the

Debtors, the DIP Agent, the DIP Escrow Agent (if applicable), and the Required DIP Lenders may agree), it being understood that (i) no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the DIP Documents or the DIP Obligations that do not shorten the maturity of the extensions of credit thereunder or modify the commitments or the rate of interest or other amounts payable thereunder and (ii) any such amendments, waivers, consents or modifications to the DIP Documents shall be provided to the U.S. Trustee and the Committee (if any);

(3) the non-refundable payment to each of and/or on behalf of the DIP Secured Parties, as applicable, of the fees and expenses referred to in the DIP Documents, including (x) all fees and other amounts owed to the DIP Agent, the DIP Escrow Agent, and the DIP Lenders and (y) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, the reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents (whether incurred before or after the Petition Date, including, for the avoidance of doubt, (a) the Specified Lender Advisors; (b) the Crossholder Lender Advisors; and (c) the Agent Advisors (each, as defined in the DIP Credit Agreement), and, solely to the extent necessary to exercise its rights and fulfill its obligations under the DIP Documents, one counsel to the DIP Agent in each local jurisdiction, which such fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court provided that any fees and expenses of a professional shall be subject to the provisions of Paragraph 18 of this Interim Order; and

(4) the performance of all other acts required under or in connection with the DIP Documents.

(e) Upon entry of this Interim Order, the DIP Documents, the DIP Obligations, and the DIP Liens shall constitute valid, binding, and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Interim Order for all purposes during the Cases, any subsequently converted Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Documents, or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under sections 502(d), 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim. All payments or proceeds remitted (a) to or on behalf of the DIP Agent or the DIP Escrow Agent on behalf of any DIP Secured Parties or (b) to or on behalf of the Prepetition Secured Parties, in each case pursuant to the DIP Documents, the provisions of this Interim Order, or any subsequent order of this Court, shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or the "equities of the case" exception of section 552(b) of the Bankruptcy Code (and, solely in the case of waivers of rights under sections 506(c) and 552(b) of the Bankruptcy Code, subject to the entry of the Final Order approving such waivers).

(f) The Guarantors are hereby authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of this Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations.

4. Budget and Variance Reporting. The Initial Approved Budget is attached hereto as Exhibit 1 and each updated, modified, or supplemented budget shall be in form and substance satisfactory to the Required DIP Lenders (it being acknowledged and agreed that the Initial Approved Budget attached to this Interim Order is approved by and satisfactory to the Required DIP Lenders and is and shall be the Approved Budget unless and until replaced in accordance with terms of the DIP Credit Agreement, and that with respect to any subsequent Approved Budget, such approval and satisfaction of the Required DIP Lenders may be communicated via an email from either of the Specified Lender Advisors). The Approved Budget shall be updated, modified or supplemented by the Debtors from time to time in writing transmitted to the DIP Agent and the Specified Lender Advisors with the written consent of and/or at the request of the Required DIP Lenders (with a copy of such written consent or request concurrently delivered to the DIP Agent) (which consent may be communicated via an email from any of the Specified Lender Advisors) (any such proposed budget, the “**Proposed Budget**”), but in any event not less than one time in each four (4) consecutive week period, commencing with the first full week following entry of this Interim Order, and each Proposed Budget shall be substantially in the form of the Initial Approved Budget and otherwise satisfactory to the Required DIP Lenders, and no such Proposed Budget shall be effective unless acceptable to the Required DIP Lenders (which acceptance may be communicated via an email from any of the Specified Lender Advisors); and upon delivery of such acceptance by the Required DIP Lenders, such Proposed Budget shall be deemed the newly approved Approved Budget; provided, however, that in the event the Required DIP Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall constitute an immediate Event of Default once the period covered by the prior approved Approved Budget has terminated (and at all times thereafter

such then current approved Approved Budget shall remain in effect unless and until a new Approved Budget is approved by the Required DIP Lenders (which approval may be communicated via an email from any of the Specified Lender Advisors)). Commencing on July 16, 2020, on or before 5:00 p.m. (Eastern Standard Time) on the Thursday of every other week, the Borrower shall deliver to the DIP Agent and the Specified Lender Advisors (for distribution to the DIP Lenders) an Approved Budget Variance Report (as defined in the DIP Credit Agreement), which shall be prepared by the Borrower as of the last day of the respective Variance Testing Period (as defined in the DIP Credit Agreement), be in a form satisfactory to the Required DIP Lenders in their sole discretion (which satisfaction may be communicated via an email from any of the Specified Lender Advisors) and include all materials required by, and be otherwise consistent with, Section 9.18(c) of the DIP Credit Agreement.

5. Access to Records. Upon request, the Debtors shall provide the Specified Lender Advisors and the Crossholder Lender Advisors with all reporting and other information required to be provided to the DIP Agent under the DIP Documents, subject to the same limitations set forth therein. In addition to, and without limiting whatever rights to access the DIP Secured Parties have under the DIP Documents, upon reasonable notice to Debtors' counsel (e-mail being sufficient), at reasonable times and during normal business hours, the Debtors shall permit representatives, agents, and employees of the DIP Secured Parties to have access to (i) inspect the Debtors' assets, and (ii) all information (including historical information and the Debtors' books and records) and personnel, including regularly scheduled meetings as mutually agreed with the senior management of the Debtors and other company advisors (during normal business hours), and provide the DIP Secured Parties with access to all information they shall reasonably request, excluding any information for which confidentiality is owed to third parties, information subject

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to attorney client or similar privilege, or where such disclosure would not be permitted by any applicable law, in each case as set forth in the DIP Documents.

6. DIP Superpriority Claims. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "**DIP Superpriority Claims**") (without the need to file any proof of claim) with priority over any and all administrative expenses, adequate protection claims, diminution claims (if any), and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c) (subject to authorization in the Final Order), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, which allowed claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, subject to authorization in the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code (such claims and causes of action, the "**Avoidance Actions**" and, the proceeds thereof and the property recovered with respect thereto, collectively, the "**Avoidance Proceeds**"), if any, subject only to, and subordinated in all respects to, the payment of the Carve Out.

7. DIP Liens. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the

Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, state or federal notices, recordings (including, without limitation, any recordings with the United States Patent and Trademark or Copyright Office), or other similar documents or agreements, or the possession or control by the DIP Agent, the DIP Escrow Agent, or any DIP Lender of, or over, any DIP Collateral, the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Secured Parties (all property identified in clause (a) and (b) below being collectively referred to as the “**DIP Collateral**”), subject only to (x) the Carve Out and (y) the Existing Senior Liens (all such liens and security interests granted to the DIP Collateral Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “**DIP Liens**”):

(a) First Priority Lien On Any Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority senior security interest in and lien upon all property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (collectively, the “**Previously Unencumbered Property**”) (subject to the Carve Out), including, without limitation (in each case, to the extent not subject to valid, perfected, and non-avoidable liens), an equity pledge of any first-tier foreign subsidiaries of the Debtors, unencumbered cash constituting property of the Debtors (whether maintained with the DIP Agent, the DIP Escrow Agent, or otherwise) and any investment of such cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles,

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tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests (including equity interests in subsidiaries of each Debtor), money, investment property, intercompany claims, claims arising on account of transfers of value from a Debtor to (x) another Debtor and (y) a non-Debtor affiliate incurred on or following the Petition Date, causes of action, including causes of action arising under section 549 of the Bankruptcy Code (but excluding all other Avoidance Actions), all products and proceeds of the foregoing and, subject to entry of the Final Order granting such relief, the Avoidance Proceeds; provided that, for the avoidance of doubt and notwithstanding anything to the contrary contained herein, (x) with respect to non-residential leases of real property, unless the applicable lease expressly permits the granting of liens on such lease, the liens granted pursuant to this Interim Order shall attach solely to the proceeds of such lease and not to the subject lease itself and (y) Excluded Property (as defined in the DIP Credit Agreement) shall not be subject to such liens granted pursuant to this Interim Order.

(b) Liens Priming the Prepetition Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all property of the Debtors that was subject to the Prepetition Liens (subject to the Carve Out) including, without limitation, the Prepetition Collateral and Cash Collateral; provided that such liens shall be immediately junior to any valid, perfected, and unavoidable liens, if any, existing as of the Petition Date that are senior in priority to the Prepetition Liens as permitted by the terms of the Prepetition Credit Documents; provided,

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further, that, for the avoidance of doubt and notwithstanding anything to the contrary contained herein, (x) with respect to non-residential leases of real property, unless the applicable lease expressly permits the granting of liens on such lease, the liens granted pursuant to this Interim Order shall attach solely to the proceeds of such lease and not to the subject lease itself and (y) Excluded Property (as defined in the DIP Credit Agreement) shall not be subject to such liens granted pursuant to this Interim Order.

(c) Validity, Enforceability. The DIP Liens shall be enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee or other estate representative appointed in these Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, “Successor Cases”). Except as expressly provided herein with respect to the Carve Out and Existing Senior Liens, if any, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and the DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in any of these Cases or any Successor Cases, or upon the dismissal of any of these Cases or Successor Cases. The DIP Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code and, subject to and upon entry of the Final Order granting such relief, the DIP Liens shall not be subject to section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code. Subject to Paragraph 12 hereof, the DIP Liens shall be deemed legal, valid, binding, enforceable, and perfected first-priority liens (subject only to the Carve Out and Existing Senior Liens, if any), not subject to subordination, impairment, or avoidance, for all purposes in these Cases and any Successor Cases.

8. Adequate Protection for the Prepetition Secured Parties. Subject only to the Carve Out and the terms of this Interim Order, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), solely for and equal in amount to the aggregate postpetition diminution in value of such interests (if any) (each such diminution, a “**Diminution in Value**”), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Collateral, subordination to the Carve Out, the Debtors’ use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, the Prepetition Agents, for the benefit of themselves and the other Prepetition Secured Parties, are hereby granted the following (collectively, the “**Adequate Protection Obligations**”):

(a) Adequate Protection Liens.

(1) First Lien Adequate Protection Liens. As security for and adequate protection of the interests of the Prepetition First Lien Secured Parties in the Prepetition Collateral, to the extent of any Diminution in Value, the Debtors are authorized to, and as of entry of this Interim Order are deemed to have granted (without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, state or federal notices, recordings (including, without limitation, any recordings with the United States Patent and Trademark or Copyright Office), or other similar documents or agreements and without the necessity of taking possession or control of any DIP Collateral) to the Prepetition First Lien Collateral Agent, for the benefit of itself and each of the Prepetition First Lien Secured Parties, additional and replacement, valid, binding, enforceable, non-avoidable, effective and automatically perfected postpetition security interests in and liens

(together, the “**First Lien Adequate Protection Liens**”) on all DIP Collateral, including, subject to authorization in the Final Order, all Avoidance Proceeds. Subject to the terms of this Interim Order, the First Lien Adequate Protection Liens shall be subordinate only to (A) the Carve Out, (B) the DIP Liens, and (C) Existing Senior Liens, if any. The First Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code). The First Lien Adequate Protection Liens shall be enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee or other estate representative appointed in these Cases or any Successor Cases. Except as expressly provided herein with respect to the Carve Out, the DIP Liens, and the Existing Senior Liens, if any, the First Lien Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and the First Lien Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in any of these Cases or any Successor Cases, or upon the dismissal of any of these Cases or Successor Cases. The First Lien Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code and, subject to and upon entry of the Final Order, the First Lien Adequate Protection Liens shall not be subject to section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code. Subject to Paragraph 12 hereof, the First Lien Adequate Protection Liens shall be deemed legal, valid, binding, enforceable, and perfected second-priority liens (subject only to the Carve Out, the DIP Liens, and Existing Senior Liens, if any), not subject to subordination, impairment, or avoidance, for all purposes in these Cases and any Successor Cases.

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(2) Second Lien Adequate Protection Liens. As security for and adequate protection of the interests of the Prepetition Second Lien Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value, the Debtors are authorized to, and as of entry of this Interim Order are deemed to have granted (without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, state or federal notices, recordings (including, without limitation, any recordings with the United States Patent and Trademark or Copyright Office), or other similar documents or agreements and without the necessity of taking possession or control of any DIP Collateral) to the Prepetition Second Lien Collateral Agent, for the benefit of itself and each of the Prepetition Second Lien Secured Parties, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens (together, the “**Second Lien Adequate Protection Liens**” and, together with the First Lien Adequate Protection Liens, the “**Adequate Protection Liens**”) on all DIP Collateral, including, subject to authorization in the Final Order, all Avoidance Proceeds. Subject to the terms of this Interim Order, the Second Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, (C) the First Lien Adequate Protection Liens, (D) the Prepetition First Lien Revolving and Term Loan Liens, and (E) Existing Senior Liens, if any. The Second Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code). The Second Lien Adequate Protection Liens shall be enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee or other estate representative appointed in these Cases or

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any Successor Cases. Except as expressly provided herein with respect to the Carve Out, the DIP Liens, the First Lien Adequate Protection Liens, the Prepetition First Lien Revolving and Term Loan Liens, and Existing Senior Liens, if any, the Second Lien Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and the Second Lien Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in any of these Cases or any Successor Cases, or upon the dismissal of any of these Cases or Successor Cases. The Second Lien Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code and, subject to and upon entry of the Final Order, the Second Lien Adequate Protection Liens shall not be subject to section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code. Subject to Paragraph 12 hereof, the Second Lien Adequate Protection Liens shall be deemed legal, valid, binding, enforceable, and perfected third-priority liens (subject only to the Carve Out, the DIP Liens, the First Lien Adequate Protection Liens, the Prepetition First Lien Revolving and Term Loan Liens, and Existing Senior Liens, if any), not subject to subordination, impairment, or avoidance, for all purposes in these Cases and any Successor Cases.

(b) Adequate Protection Superpriority Claims.

(1) First Lien Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Prepetition First Lien Secured Parties shall have an allowed administrative expense claim in each of the Cases prior and senior to any and all other administrative expense claims in such Cases to the extent of any Diminution in Value (if any) (the “**First Lien Adequate Protection Superpriority Claims**”), but junior to the Carve Out and the DIP Superpriority Claims. Subject

to the Carve Out and the DIP Superpriority Claims in all respects, the First Lien Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to authorization in the Final Order), 507(a), 507(b), 546(d), 726, 1113, and 1114 of the Bankruptcy Code and the Second Lien Adequate Protection Claims. The Prepetition First Lien Secured Parties shall not receive or retain any payments, property or other amounts in respect of the First Lien Adequate Protection Superpriority Claims under section 507(b) of the Bankruptcy Code granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the Required DIP Lenders, in each case as provided in the DIP Documents.

(2) Second Lien Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Prepetition Second Lien Secured Parties shall have an allowed administrative expense claim in each of the Cases prior and senior to any and all other administrative expense claims in such Cases to the extent of any Diminution in Value (the “**Second Lien Adequate Protection Superpriority Claims**” and, together with the First Lien Adequate Protection Superpriority Claims, the “**Adequate Protection Superpriority Claims**”), but junior to the Carve Out, the DIP Superpriority Claims, and the First Lien Adequate Protection Superpriority Claims. Subject to the Carve Out, the DIP Superpriority Claims, and the First Lien Adequate Protection Superpriority Claims in all respects, the Second Lien Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the

Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to authorization in the Final Order), 507(a), 507(b), 546(d), 726, 1113, and 1114 of the Bankruptcy Code. The Prepetition Second Lien Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Second Lien Adequate Protection Superpriority Claims under section 507(b) of the Bankruptcy Code granted hereunder unless and until the DIP Obligations and the First Lien Adequate Protection Superpriority Claims have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the Required DIP Lenders and the Prepetition First Lien Secured Parties, in each case as provided in the DIP Documents.

(c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of Paragraph 18 of this Interim Order, all reasonable and documented out-of-pocket fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or after the Petition Date, including all reasonable and documented out-of-pocket fees and expenses of the Prepetition Agents and for the counsel and other professionals retained as provided for in the DIP Documents and this Interim Order, including, for the avoidance of doubt, of (A) the Specified Lender Advisors, (B) the Crossholder Lender Advisors, (C) the Agent Advisors, and (D) solely to the extent necessary to exercise and fulfill their obligations under the Prepetition Credit Documents, one counsel to the Prepetition Agents in each local jurisdiction (all payments referenced in this sentence, collectively, the “**Adequate Protection Payments**”). None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall



be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

(d) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request, and the Debtors' rights to object to the same are expressly preserved.

(e) Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is modified to the extent necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant and allow the DIP Liens, the Adequate Protection Liens, the DIP Superpriority Claims, and the Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent, the Required DIP Lenders, the Prepetition Agents, the Required Prepetition First Lien Lenders or the Required Prepetition Second Lien Lenders may request in their respective reasonable discretions to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Agents, the DIP Secured Parties, and the Prepetition Secured Parties under this Interim Order; and (d) subject to the Carve Out, authorize the Debtors to make, and the Agents, the DIP Secured Parties, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order; provided that, during the Remedies Notice Period (defined below), the automatic stay under section 362 of the Bankruptcy Code (to the extent applicable) shall remain in effect.

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9. Carve Out.

(a) Priority of Carve Out. Subject to the terms and conditions contained in this Paragraph 9, each of the DIP Liens, DIP Superpriority Claims, Prepetition Liens, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall be subject and subordinate to the Carve Out. The Carve Out shall have such priority over all assets of the Debtors, including any DIP Collateral, Prepetition Collateral, and any funds in the Loan Proceeds Account (as defined in the DIP Credit Agreement).

(b) Definition of Carve Out. As used in this Interim Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in clause (iii) below); (ii) all reasonable and documented out-of-pocket fees and expenses up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all reasonable and documented unpaid out-of-pocket fees and expenses (collectively, the “**Allowed Professional Fees**”) of persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (such persons or firms, the “**Debtor Professionals**”) and any persons or firms retained by any Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”) incurred at any time before or on the first business day following delivery by the DIP Agent (at the direction of Required DIP Lenders) of a Carve Out Trigger Notice (defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed

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\$3,000,000 incurred after the first business day following delivery by the DIP Agent (at the direction of Required DIP Lenders) of the Carve Out Trigger Notice (the “**Termination Declaration Date**”), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve Out Trigger Notice Cap**”). For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of Required DIP Lenders) to the Debtors, their lead restructuring counsel (Weil, Gotshal & Manges LLP), the U.S. Trustee, and counsel to the Committee, if any, which notice shall be delivered following (i) the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked or (ii) the occurrence of a Maturity Date (as defined in the DIP Credit Agreement), other than clauses (a), (c), or (d) of the definition of “Maturity Date” in the DIP Credit Agreement (the “**Specified Maturity Date**”).

(c) Carve Out Reserves. On the Termination Declaration Date, the Carve Out Trigger Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for DIP Term Loans under the DIP Facility (on a pro rata basis based on the then outstanding DIP Obligations), in an amount equal to the then unpaid amounts (including the good-faith estimated and reasonable Professional Fees accrued and not yet invoiced) of the Allowed Professional Fees (any such amounts actually advanced shall constitute DIP Term Loans) and (ii) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The DIP Escrow Agent shall transfer the applicable amounts, and the Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such

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then unpaid Allowed Professional Fees (the “**Pre-Carve Out Trigger Notice Reserve**”) prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a request by the Debtors for DIP Term Loans under the DIP Facility (on a pro rata basis based on the then outstanding DIP Obligations), in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Term Loans) and (ii) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The DIP Escrow Agent shall transfer the applicable amounts, and the Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “**Post-Carve Out Trigger Notice Reserve**” and, together with the Pre-Carve Out Trigger Notice Reserve, the “**Carve Out Reserves**”) prior to any and all other claims. On the first business day after the DIP Agent gives such notice to such DIP Lenders, notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for DIP Loans under the DIP Facility, any termination of the DIP Obligations following an Event of Default, or the occurrence of the Maturity Date, each DIP Lender with an outstanding Commitment (on a pro rata basis based on the then outstanding Commitments) shall make available to the DIP Agent such DIP Lender’s pro rata share with respect to such borrowing in accordance with the DIP Facility. Notwithstanding any restriction on the Debtors’ use of Cash Collateral, all funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above

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(the “**Pre-Carve Out Amounts**”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Secured Parties, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the applicable Prepetition Agents for the benefit of the applicable Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding any restriction on the Debtors’ use of Cash Collateral, all funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “**Post-Carve Out Amounts**”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Secured Parties, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the applicable Prepetition Agents for the benefit of the applicable Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents, or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this Paragraph 9, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this Paragraph 9, prior to making any payments to the DIP Agent or the Prepetition Agents, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Agent, the DIP Escrow Agent and the Prepetition Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other

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disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, or in any facility pursuant to Prepetition Credit Agreements, the Carve Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, the DIP Superpriority Claims, and the Adequate Protection Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Obligations.

(d) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(e) No Direct Obligation to Pay Allowed Professional Fees. None of the DIP Agent, the DIP Escrow Agent, the DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Escrow Agent, the DIP

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Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(f) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall otherwise be entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

10. Reserved.

11. Reservation of Rights of the DIP Agent, DIP Escrow Agent, DIP Lenders, and Prepetition Secured Parties. Subject in all cases to the Carve Out, notwithstanding any other provision in this Interim Order or the DIP Documents to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection at and following the Final Hearing; provided that any such further or different adequate protection shall at all times be subordinate and junior to the Carve Out and the claims and liens of the DIP Secured Parties granted under this Interim Order and the DIP Documents; (b) any of the rights of the DIP Secured Parties or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the DIP Secured Parties or the Prepetition Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the

Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Cases, or (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or failure of the DIP Secured Parties and/or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights and remedies.

12. Reservation of Certain Committee and Third Party Rights and Bar of Challenges and Claims. Subject to the Challenge Period (defined below), the stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (defined below) as of the Petition Date. The stipulations, admissions, and waivers contained in this Interim Order, including, the Debtors' Stipulations, shall be binding upon all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, unless and to the extent that a party in interest with proper standing granted by order of the Court (or other court of competent jurisdiction) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (i) before the earlier of (a) except as to any Committee, seventy-five (75) calendar days after entry of the Interim Order, (b) in the case of any such adversary proceeding or contested matter filed by any Committee, sixty (60) calendar days after the appointment of such Committee, and (c) the date of entry of an order confirming a chapter 11 plan, subject to further extension by written agreement of the Prepetition First Lien Agent (acting at the direction of the Required Prepetition First Lien Lenders) and the



Prepetition Second Lien Agent (acting at the direction of the Required Prepetition Second Lien Lenders) (in each case, a “Challenge Period” and the date of expiration of each Challenge Period being, a “Challenge Period Termination Date”); provided, however, that if, prior to the end of a Challenge Period (x) the cases are converted to chapter 7, or (y) a chapter 11 trustee is appointed, then, in each such case, the Challenge Period applicable to the chapter 7 trustee or the chapter 11 trustee shall be the time remaining under the applicable Challenge Period plus ten (10) days; (ii) seeking to avoid, object to, or otherwise challenge the findings or Debtors’ Stipulations regarding: (a) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Agents and the Prepetition Secured Parties; or (b) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Obligations (any such claim, a “Challenge”), and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter. Upon the expiration of the Challenge Period Termination Date without the filing of a Challenge (or if any such Challenge is filed and overruled): (a) any and all such Challenges by any party (including the Committee, if any, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Cases) shall be deemed to be forever barred; (b) the Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in these Cases and any Successor Cases; (c) the Prepetition Indebtedness shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtors’ stipulations and admissions contained in this Interim Order, including the Debtors’

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Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties' claims, liens, and interests contained in this Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. Furthermore, if any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation any challenges (including a Challenge) with respect to the Prepetition Credit Documents, the Prepetition Liens, and the Prepetition Obligations, and a separate order of the Court conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest.

13. DIP Termination Date. On the DIP Termination Date (defined below), (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate; (b) all authority to use Cash Collateral shall cease; provided, however, that during the Remedies Notice Period, the Debtors may use Cash Collateral to fund the Carve Out and pay payroll and other expenses critical to the administration of the Debtors' estates strictly in accordance with the Approved Budget, subject to such variances as permitted in the DIP Credit

Agreement; and (c) the DIP Secured Parties shall be otherwise entitled to exercise rights and remedies under the DIP Documents in accordance with this Interim Order. For the purposes of this Interim Order, the “**DIP Termination Date**” shall mean the “**Maturity Date**” as defined in the DIP Credit Agreement.

14. Events of Default. The occurrence of any of the following events, unless waived by the Required DIP Lenders in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the “**Events of Default**”): (a) the failure of the Debtors to comply with or perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order; or (b) the occurrence of an “Event of Default” under the DIP Credit Agreement (subject to any applicable cure or grace period).

15. Rights and Remedies Upon Event of Default. Immediately upon the occurrence of and during the continuation of an Event of Default, or a Specified Maturity Date, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order and the Remedies Notice Period, (a) the DIP Agent (at the direction of Required DIP Lenders) may declare (any such declaration shall be referred to herein as a “**Termination Declaration**”) (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) the termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent, the DIP Escrow Agent, and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) the application of the Carve Out through the delivery of the Carve Out Trigger Notice to the Borrower and (b) subject to Paragraph 13 above, the DIP Agent (at the

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direction of Required DIP Lenders) may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date which is the earliest to occur of any such date a Termination Declaration is delivered and the DIP Termination Date shall be referred to herein as the "Termination Date"). The Termination Declaration shall not be effective until notice has been provided by electronic mail (or other electronic means) to counsel to the Debtors (Weil, Gotshal & Manges LLP), counsel to the Committee, if any, and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP Agent, the DIP Escrow Agent, the DIP Lenders, and the Prepetition Secured Parties is hereby modified so that five (5) Business Days after the date a Termination Declaration is delivered (the "Remedies Notice Period"): (a) the DIP Agent (at the direction of Required DIP Lenders) shall be entitled to exercise its rights and remedies in accordance with the DIP Documents and this Interim Order to satisfy the DIP Obligations and DIP Superpriority Claims; and (b) the applicable Prepetition Secured Parties shall be entitled to exercise their rights and remedies to the extent available in accordance with the applicable Prepetition Credit Documents and this Interim Order with respect to the Debtors' use of Cash Collateral; provided, however, for the avoidance of doubt the Debtors may continue to use Cash Collateral in accordance with Paragraph 13 of this Interim Order during the Remedies Notice Period. During the Remedies Notice Period, the Debtors, the Committee, if any, and/or any party in interest shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court. Except as set forth in this Paragraph 15 or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, upon the expiration of the Remedies Notice Period, the Debtors shall be deemed to have waived their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent, the DIP Escrow

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Agent, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order. Unless the Court has determined that an Event of Default has not occurred and/or is not continuing or the Court orders otherwise, the automatic stay shall automatically be terminated as to all of the DIP Agent, the DIP Escrow Agent, the DIP Lenders, and the Prepetition Secured Parties (solely with respect to the use of Cash Collateral to the extent permitted hereunder) at the expiration of the Remedies Notice Period without further notice or order, and the DIP Agent (at the direction of Required DIP Lenders) and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP Documents, and in the Prepetition Credit Documents, as applicable, or as otherwise available at law without further order of or application or motion to this Court consistent with this Interim Order.

16. Limitation on Charging Expenses Against Collateral. Subject to entry of the Final Order granting such relief, no expenses of administration of the Cases or any Successor Cases or future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral or the DIP Collateral (except to the extent of the Carve Out), the DIP Agent, the DIP Escrow Agent, the DIP Lenders, or the Prepetition Secured Parties pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of the DIP Agent (at the direction of Required DIP Lenders), the DIP Escrow Agent, the DIP Lenders, and the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Escrow Agent, the DIP Lenders, or the Prepetition Secured Parties.

17. Use of Cash Collateral. The Debtors are hereby authorized to use the Cash Collateral of the Prepetition Secured Parties, but solely for the purposes set forth in this Interim

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Order and in accordance with the Approved Budget (subject to permitted variances as set forth in this Interim Order and the DIP Documents) including, without limitation, to make payments on account of the Adequate Protection Obligations provided for in this Interim Order and to make any transfers between Debtors necessary to comply with the terms of the DIP Documents and this Interim Order.

18. Expenses and Indemnification.

(a) The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and without need to obtain further Court approval, including, without limitation, backstop, closing, arrangement or commitment fees (including all fees and other amounts owed to the DIP Lenders), the DIP Administrative Agent's fees, the DIP Collateral Agent's fees, and the DIP Escrow Agent's fees, the reasonable and documented out-of-pocket fees and disbursements of counsel and other professionals to the extent set forth in Paragraph 8(c) of this Interim Order, whether or not such fees arose before or after the Petition Date, all to the extent provided in this Interim Order or the DIP Documents. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date (as defined in the DIP Credit Agreement) all reasonable and documented fees, costs, and expenses, including the fees and expenses of counsel and advisors to the DIP Lenders, the DIP Agent, the DIP Escrow Agent, the Prepetition Agents, and the Prepetition Secured Parties, incurred on or prior to such date without the need for any professional engaged by the DIP Lenders, the DIP Agent, the DIP Escrow Agent, the Prepetition Agents, or the Prepetition Secured Parties to first deliver a copy of its invoice as provided for herein.

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(b) The Debtors shall be jointly and severally obligated to pay all fees and expenses described above, which obligations shall constitute DIP Obligations. Provided no Fee Objection (defined below) has been made, the Debtors shall pay the reasonable and documented out-of-pocket professional fees, expenses, and disbursements of professionals to the extent provided for in paragraph 8(c) of this Interim Order (collectively, the “**Lender Professionals**” and, each, a “**Lender Professional**”) as soon as reasonably practicable after a ten (10) Business Days review period commencing with the receipt by counsel for the Debtors, any Committee, and the U.S. Trustee of each of the invoices therefor (the “**Invoiced Fees**” and such review period, the “**Review Period**”) and without the necessity of filing formal fee applications, including such amounts arising before the Petition Date. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed, and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law; provided that, upon the request of the U.S. Trustee prior to the expiration of the Review Period, the applicable Lender Professional shall provide more detailed support of the Invoiced Fees to the U.S. Trustee on a confidential basis. The Debtors, any Committee, or the U.S. Trustee (collectively, the “**Fee Notice Parties**”) may dispute the payment of any portion of

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the Invoiced Fees (the “**Disputed Invoiced Fees**”) if, within the Review Period, a Fee Notice Party notifies the submitting party in writing setting forth the specific objections (a “**Fee Objection**”) to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten (10) days prior written notice to the submitting party of any hearing on such motion or other pleading). For the avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees in accordance with the terms of this paragraph other than the Disputed Invoiced Fees.

(c) In addition, the Debtors will indemnify the DIP Lenders, the DIP Agent, the DIP Escrow Agent, and their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing (each, an “**Indemnified Person**”) and hold them harmless from and against all costs, expenses (including but not limited to reasonable and documented out-of-pocket legal fees and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility; provided that no such person will be indemnified for costs, expenses, or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the gross negligence, actual fraud, bad faith, or willful misconduct of such person (or their related persons).

19. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

20. Section 507(b) Reservation. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate

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protection provided to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

21. Insurance. Until the DIP Obligations have been indefeasibly paid in full, at all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral and the DIP Collateral on the terms set forth in the DIP Documents.

22. No Waiver for Failure to Seek Relief. The failure or delay of the DIP Agent, the DIP Escrow Agent, or the Required DIP Lenders to exercise rights and remedies under this Interim Order, the DIP Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights hereunder, thereunder, or otherwise.

23. Perfection of the DIP Liens and Adequate Protection Liens.

(a) The DIP Agent, the DIP Escrow Agent, and the Prepetition Agents are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, deposit account control agreements, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not the DIP Agent (at the direction of Required DIP Lenders), the Prepetition First Lien Agent (at the direction of Required Prepetition First Lien Lenders), or the Prepetition Second Lien Agent (at the direction of Required Prepetition Second Lien Lenders) shall choose to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed,

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enforceable, non-avoidable, and not, subject to the Challenge Period, subject to challenge, dispute, or subordination as of the date of entry of this Interim Order. If the DIP Agent (at the direction of Required DIP Lenders), the Prepetition First Lien Agent (at the direction of Required Prepetition First Lien Lenders), or the Prepetition Second Lien Agent (at the direction of Required Prepetition Second Lien Lenders) determine to file or execute any financing statements, agreements, notice of liens, or similar instruments, the Debtors shall cooperate and assist in any such execution and/or filings as reasonably requested by the DIP Agent (at the direction of Required DIP Lenders), the Prepetition First Lien Agent (at the direction of Required Prepetition First Lien Lenders), or the Prepetition Second Lien Agent (at the direction of Required Prepetition Second Lien Lenders), and the automatic stay shall be modified to allow such filings.

(b) A certified copy of this Interim Order may be filed with or recorded in filing or recording offices by or on behalf of the DIP Agent (at the direction of Required DIP Lenders), the Prepetition First Lien Agent (at the direction of Required Prepetition First Lien Lenders), or the Prepetition Second Lien Agent (at the direction of Required Prepetition Second Lien Lenders) in addition to or in lieu of such financing statements, mortgages, notices of lien, or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording; provided, however, that notwithstanding the date of any such filing, the date of such perfection shall be the date of this Interim Order.

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the

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Bankruptcy Code, subject to applicable law. Any such provision shall have no force and effect with respect to the granting of the DIP Liens and the Adequate Protection Liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in accordance with the terms of the DIP Credit Agreement or this Interim Order, subject to applicable law.

24. Reserved.

25. Release. Subject to the rights and limitations set forth in Paragraphs E(v) and 12 of this Interim Order, and with respect to the DIP Secured Parties, effective upon entry of this Interim Order, and with respect to the Prepetition Secured Parties, effective upon entry of the Final Order, each of the Debtors and the Debtors' estates, on their own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the DIP Secured Parties, and each of the Prepetition Secured Parties, and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, and predecessors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Liens, the DIP Documents, the

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Prepetition Obligations, the Prepetition Liens, or the Prepetition Credit Documents, as applicable, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties; provided that nothing in this paragraph shall in any way limit or release the obligations of any DIP Secured Party under the DIP Documents.

26. Credit Bidding. Subject to the terms of the RSA, section 363(k) of the Bankruptcy Code and, solely with respect to the Prepetition First Lien Agent and the Prepetition Second Lien Agent, entry of the Final Order, the DIP Agent (at the direction of the Required DIP Lenders), the Prepetition First Lien Agent (at the direction of the Required Prepetition First Lien Lenders), or the Prepetition Second Lien Agent (at the direction of the Required Prepetition Second Lien Lenders) shall have the right to credit bid (either directly or through one or more acquisition vehicles), up to the full amount of the underlying lenders’ respective claims, including, for the avoidance of doubt, Adequate Protection Superpriority Claims, if any, in any sale of all or any portion of the Prepetition Collateral or the DIP Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii)-(iii).

27. Preservation of Rights Granted Under this Interim Order.

(a) Unless and until all DIP Obligations are indefeasibly paid in full, in cash, and all commitments to extend credit under the DIP Facility are terminated, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Credit Documents or this

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Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral; and (ii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral, except as set forth in Paragraph 23 herein.

(b) In the event this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or the Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits afforded in section 364(e) of the Bankruptcy Code.

(c) Unless and until all DIP Obligations, Prepetition Obligations, and Adequate Protection Payments are indefeasibly paid in full, in cash, and all commitments to extend credit under the DIP Facility are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents or, if not provided for therein, with the prior written consent of the DIP Agent (at the direction of Required DIP Lenders), the DIP Escrow Agent, the Required DIP Lenders, the Prepetition First Lien Agent (at the direction of Required Prepetition First Lien Lenders), the Required Prepetition First Lien Lenders, the Prepetition Second Lien Agent (at the direction of Required Prepetition Second Lien Lenders), and the Required Prepetition Second Lien Lenders, (x) any modification, stay, vacatur, or amendment of this Interim Order or (y) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in

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sections 503(b), 507(a), or 507(b) of the Bankruptcy Code) in any of the Cases, *pari passu* with or senior to the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, or the Prepetition Obligations, or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents (including the Carve Out), any lien on any of the DIP Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Liens, as applicable; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the Cases; (vi) an order appointing a chapter 11 trustee in any of the Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Cases.

(d) Notwithstanding any order dismissing any of the Cases entered at any time, (x) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Payments are indefeasibly paid in full, in cash (and such DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order, shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) to the fullest extent permitted by law the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in clause (x) above.

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(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Agent, the DIP Escrow Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the Bankruptcy Code, or (iii) the entry of an order confirming a chapter 11 plan in any of the Cases. Pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Cases, in any Successor Cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Payments are indefeasibly paid in full, in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required DIP Lenders, the DIP Agent (acting at the direction of the Required DIP Lenders), and the DIP Escrow Agent).

(f) Other than as set forth in this Interim Order, neither the DIP Liens nor the Adequate Protection Liens shall be made subject to or *pari passu* with any lien or security interest

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granted in any of the Cases or arising after the Petition Date, and neither the DIP Liens nor the Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

28. Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral.

Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds thereof may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, seek standing with respect to, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the DIP Secured Parties or the Prepetition Secured Parties (each in their capacities as such), and each of their respective affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called "lender liability" claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Secured Parties or the Prepetition Secured Parties (each in their capacities as such) under the DIP Documents, the Prepetition Credit Documents, or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed in these Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar

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relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties to recover on the DIP Collateral or the Prepetition Collateral or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition Parties related to the DIP Obligations or the Prepetition Obligations; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or the Prepetition Obligations, or the DIP Agent's, the DIP Escrow Agent's, the DIP Lenders', and the Prepetition Secured Parties' liens or security interests in the DIP Collateral or Prepetition Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against the DIP Secured Parties or the Prepetition Secured Parties, or the DIP Agent's, the DIP Escrow Agent's, the DIP Lenders', or the Prepetition Secured Parties' respective liens on or security interests in the DIP Collateral or the Prepetition Collateral, as applicable, that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition Obligations, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Obligations, or by or on behalf of the DIP Agent, the DIP Escrow Agent, and the DIP Lenders related to the DIP Obligations; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Obligations, the DIP Liens, the Prepetition Obligations, or the Prepetition Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (x) any of the DIP Liens or any other rights or interests of the DIP Agent, the DIP Escrow Agent, or the DIP Lenders related to the DIP Obligations or the DIP Liens, or (y) any of the Prepetition Liens or any

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other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Obligations or the Prepetition Liens; provided that no more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by any Committee appointed in these Cases, if any, solely to investigate, within the Challenge Period, the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Secured Parties solely concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Obligations. Nothing contained in this Paragraph 28 shall prohibit the Debtors from responding or objecting to or complying with discovery requests of any Committee, in whatever form, made in connection with such investigation or the payment from the DIP Collateral (including Cash Collateral) of professional fees related thereto or from contesting or challenging whether a Termination Declaration has in fact occurred.

29. Conditions Precedent. No DIP Lender shall have any obligation to make any DIP Loan under the respective DIP Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP Documents have been satisfied in full or waived in accordance with such DIP Documents.

30. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including without limitation, the DIP Secured Parties, the Prepetition Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or

any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties and the applicable Prepetition Secured Parties; provided that, except to the extent expressly set forth in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement, a promissory note or otherwise) to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

31. Limitation of Liability. Subject to entry of a Final Order, in determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition Secured Parties shall not, solely by reason thereof, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Escrow Agent, the DIP Lenders, or any Prepetition Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.

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32. No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, none of the DIP Agent, the DIP Escrow Agent, or any DIP Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Documents without the necessity of filing any such proof of claim or request for payment of administrative expenses, and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the DIP Agent's, the DIP Escrow Agent's, or any DIP Lender's rights, remedies, powers, or privileges under any of the DIP Documents, this Interim Order, or applicable law. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

33. No Requirement to File Claim for Prepetition Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the Prepetition Agents nor any Prepetition Secured Parties shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Obligations or Adequate Protection Superpriority Claims; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or

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enforceability of any of the Prepetition Credit Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect any Prepetition Agent's or any Prepetition Secured Party's rights, remedies, powers, or privileges under any of the Prepetition Credit Documents, this Interim Order, or applicable law. In the event any Prepetition Agent nevertheless files a proof of claim, such Prepetition Agent is hereby authorized to file a single consolidated master proof of claim for all applicable Prepetition Obligations arising under the applicable Prepetition Credit Documents and applicable Adequate Protection Superpriority Claims, and such master proof of claim shall be deemed to constitute the filing of such proof of claim in each of the Cases of any Debtor against whom a claim may be asserted under the applicable Prepetition Credit Documents or this Interim Order. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

34. No Marshaling. Subject to entry of a Final Order granting such relief, the DIP Agent and the DIP Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral, and proceeds of the DIP Collateral shall be received and applied pursuant to this Interim Order and the DIP Documents notwithstanding any other agreement or provision to the contrary. Subject to entry of a Final Order granting such relief, the Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral.

35. Reserved.

36. Equities of the Case. The Prepetition Secured Parties shall each be entitled to all the rights and benefits of section 522(b) of the Bankruptcy Code, and, subject to and upon entry



of the Final Order granting such relief, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Collateral (including the Prepetition Collateral).

37. Final Hearing. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served in accordance with Local Rules 5005-4 and 9036-1 upon the following parties: (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)). Further notice should be served upon; (i) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (Christina.brown@gibsondunn.com)), (ii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)) by **June 30, 2020 at 4:00 p.m. (prevailing Eastern Time)**. In the event no objections to entry of the Final Order are timely received, this Court may enter such Final Order without need for the Final Hearing.

38. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon execution hereof.

39. Retention of Jurisdiction. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Dated: June 16th, 2020  
Wilmington, Delaware

RLF1 23577146v.1



63 MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

RAS

**EXHIBIT 1**

**Initial Approved Budget**

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**Project Study**  
Global Consolidated  
Initial Approved Budget

Week Number	1	2	3	4	5	6	7	8	9	10
Week Ending	06/12/20	06/19/20	06/26/20	07/03/20	07/10/20	07/17/20	07/24/20	07/31/20	08/07/20	08/14/20
<b>Operating Forecast</b>										
Cash Receipts	7,366,129	7,033,970	9,417,178	7,208,216	4,714,145	5,963,146	4,981,788	9,264,077	6,709,218	6,178,481
Operational Disbursements	(8,648,467)	(3,199,443)	(6,162,365)	(2,680,099)	(669,800)	(5,907,556)	(2,709,583)	(7,324,246)	(1,146,634)	(5,919,015)
Compensation & Benefits	(273,285)	(205,510)	(187,733)	(422,550)	(273,285)	(53,510)	(187,733)	(187,733)	(420,385)	(273,285)
Rent & Utilities	(1,461,745)	(3,560,212)	(3,531,658)	(6,717,037)	(2,959,957)	(2,989,511)	(2,959,957)	(2,959,957)	(2,657,611)	(6,564,641)
Other Operating Disbursements	(10,383,487)	(6,965,164)	(9,881,756)	(11,819,686)	(3,903,042)	(8,896,067)	(5,725,050)	(10,471,937)	(4,224,630)	(12,756,940)
<b>Total Operational Disbursements</b>	<b>(10,383,487)</b>	<b>(6,965,164)</b>	<b>(9,881,756)</b>	<b>(11,819,686)</b>	<b>(3,903,042)</b>	<b>(8,896,067)</b>	<b>(5,725,050)</b>	<b>(10,471,937)</b>	<b>(4,224,630)</b>	<b>(12,756,940)</b>
Non-Operational Disbursements	(7,696,422)	(600,000)	-	(140,000)	-	(150,000)	-	(2,650,000)	-	(42,951,234)
Professional Fees	-	(3,300,000)	-	(711,838)	-	-	-	(691,011)	-	(4,850,000)
Debt Service	-	-	-	(881,858)	-	(150,000)	-	(3,341,011)	-	(47,801,234)
<b>Total Non-Operational Disbursements</b>	<b>(7,696,422)</b>	<b>(3,900,000)</b>	<b>-</b>	<b>(851,858)</b>	<b>-</b>	<b>(150,000)</b>	<b>-</b>	<b>(3,341,011)</b>	<b>-</b>	<b>(47,801,234)</b>
Taxes	(504,876)	(517,798)	(238,174)	(181,267)	(51,321)	(902,076)	(114,765)	(253,407)	(461,195)	(310,525)
<b>Net Cash Flow</b>	<b>(11,218,666)</b>	<b>(4,348,993)</b>	<b>(702,752)</b>	<b>(5,644,595)</b>	<b>759,782</b>	<b>(3,984,997)</b>	<b>(858,026)</b>	<b>(4,802,278)</b>	<b>2,023,393</b>	<b>(54,690,218)</b>
Cash transferred to Non-Debtors	-	1,500,000	500,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	8,000,000
Cash Transferred Cumulative	-	1,500,000	2,000,000	2,000,000	4,000,000	4,000,000	6,000,000	6,000,000	8,000,000	8,000,000
<b>Liquidity</b>										
Liquidity	13,042,390	28,891,709	43,209,869	32,643,355	30,109,344	31,943,763	32,601,917	38,633,312	35,946,410	46,927,721
Cash	-	-	-	-	-	-	-	-	-	-
AR Facility Availability	-	-	-	-	-	-	-	-	-	-
Revolver Availability	-	-	-	-	-	-	-	-	-	-
Less: Unavailable Foreign Cash	(650,244)	(650,244)	(650,244)	(650,244)	(650,244)	(650,244)	(650,244)	(650,244)	(650,244)	(650,244)
<b>Total Liquidity</b>	<b>12,392,146</b>	<b>28,241,465</b>	<b>42,559,625</b>	<b>31,993,111</b>	<b>29,459,100</b>	<b>31,293,519</b>	<b>31,951,673</b>	<b>37,983,068</b>	<b>35,296,166</b>	<b>46,272,477</b>
Senior Secured Super-Priority TL	-	-	-	-	-	-	-	-	-	-
Beginning Balance	-	-	25,000,000	25,000,000	25,000,000	25,000,000	35,000,000	40,000,000	40,000,000	40,000,000
Additional Borrowing/(Repayment)	-	25,000,000	-	-	10,000,000	5,000,000	-	-	-	20,000,000
New First Out TL Rollover	-	-	-	-	-	-	-	-	-	(50,000,000)
<b>Ending Balance</b>	<b>-</b>	<b>25,000,000</b>	<b>25,000,000</b>	<b>25,000,000</b>	<b>25,000,000</b>	<b>35,000,000</b>	<b>40,000,000</b>	<b>40,000,000</b>	<b>40,000,000</b>	<b>-</b>
New First Out TL	-	-	-	-	-	-	-	-	-	-
Beginning Balance	-	-	-	-	-	-	-	-	-	-
Additional Borrowing/(Repayment)	-	-	-	-	-	-	-	-	-	50,000,000
New First Out TL Rollover	-	-	-	-	-	-	-	-	-	(50,000,000)
<b>Ending Balance</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>110,000,000</b>
AR Facility	67,760,133	67,760,133	67,760,133	68,365,479	68,365,479	68,365,479	68,365,479	68,365,479	63,397,178	63,397,178
Plus: Net Borrowing	-	-	21,467,015	-	-	-	-	17,357,918	-	-
Less: Repayment	-	-	(20,861,669)	-	-	-	-	(22,326,219)	-	-
<b>Ending Balance</b>	<b>67,760,133</b>	<b>67,760,133</b>	<b>68,365,479</b>	<b>68,365,479</b>	<b>68,365,479</b>	<b>68,365,479</b>	<b>68,365,479</b>	<b>63,397,178</b>	<b>63,397,178</b>	<b>63,397,178</b>
Less: Restricted Cash Balance	(16,059,980)	(20,861,669)	(6,446,103)	(11,368,022)	(14,661,815)	(18,842,399)	(22,326,219)	(6,524,244)	(11,234,539)	(15,568,011)
<b>AR Facility Pro Forma Ending Balance</b>	<b>51,700,153</b>	<b>46,898,464</b>	<b>61,919,376</b>	<b>56,997,457</b>	<b>53,703,664</b>	<b>49,523,080</b>	<b>46,039,260</b>	<b>56,872,934</b>	<b>52,162,639</b>	<b>47,829,167</b>
Restricted Cash	-	-	-	-	-	-	-	-	-	-
Beginning Balance	11,029,101	16,059,980	20,861,669	6,446,103	11,368,022	14,661,815	18,842,399	22,326,219	6,524,244	11,234,539
Plus: CIT Collections	5,030,879	4,801,689	6,446,103	4,921,919	3,293,793	4,180,584	3,483,820	6,524,244	4,710,295	4,333,471
Less: AR Facility Paydown	-	-	(20,861,669)	-	-	-	-	(22,326,219)	-	-
<b>Ending Balance</b>	<b>16,059,980</b>	<b>20,861,669</b>	<b>6,446,103</b>	<b>11,368,022</b>	<b>14,661,815</b>	<b>18,842,399</b>	<b>22,326,219</b>	<b>6,524,244</b>	<b>11,234,539</b>	<b>15,568,011</b>
Cash	29,291,936	13,042,390	28,891,709	43,209,869	32,643,355	30,109,344	31,943,763	32,601,917	38,633,312	35,946,410
Change in Cash	(16,249,546)	15,849,318	14,318,160	(10,566,514)	1,834,419	658,154	658,154	6,031,396	(2,686,902)	10,976,310
<b>Ending Balance</b>	<b>13,042,390</b>	<b>28,891,709</b>	<b>43,209,869</b>	<b>32,643,355</b>	<b>30,109,344</b>	<b>31,943,763</b>	<b>32,601,917</b>	<b>38,633,312</b>	<b>35,946,410</b>	<b>46,927,721</b>

*Handwritten initials/signature*

**EXHIBIT 2**

**Form of DIP Credit Agreement**

**SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

dated as of June [ ], 2020

among

Pointwell Limited,  
as the Parent,

Skillsoft Corporation,  
as the Borrower

the several Lenders  
from time to time party hereto,

and

WILMINGTON SAVINGS FUND SOCIETY, FSB,  
as the Administrative Agent, the Collateral Agent and the Escrow Agent

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**SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of June [ ], 2020, among Pointwell Limited, a limited liability company incorporated under the laws of Ireland with registration number 540778 (the "**Parent**"), SKILLSOFT CORPORATION, a Delaware corporation (the "**Borrower**"), as the borrower, the lending institutions from time to time parties hereto (each, a "**Lender**" and, collectively, the "**Lenders**"), and WILMINGTON SAVINGS FUND SOCIETY, FSB, as the Administrative Agent, the Collateral Agent and the Escrow Agent (such terms and each other capitalized term used but not defined in this preamble having the meaning provided in Section 1).

WHEREAS, on June [ ], 2020 (the "**Petition Date**"), each Credit Party (together with any of its Subsidiaries and Affiliates that are or become debtors under the Chapter 11 Cases, collectively, the "**Debtors**", and each individually, a "**Debtor**") commenced Chapter 11 Case Nos. [ ], as administratively consolidated at Chapter 11 Case No. [ ] (collectively, the "**Chapter 11 Cases**" and each individually, a "**Chapter 11 Case**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, within four Business Days following the entry of the Interim Order and the Prepack Scheduling Order, Skillsoft Canada, Ltd., in its capacity as foreign representative on behalf of the Debtors, will file an application with The Court of Queen's Bench of New Brunswick (the "**Canadian Bankruptcy Court**") pursuant to Part IV of the CCAA to, among other things, recognize the Chapter 11 Cases as "foreign main proceedings" and grant certain customary related relief (the "**Canadian Recognition Proceeding**");

WHEREAS, prior to the Petition Date, certain of the Lenders provided financing to the Borrower pursuant to (i) that certain First Lien Credit Agreement dated April 28, 2014, among the Borrower, the other borrowers party thereto, Wilmington Savings Fund Society, FSB (as successor in interest to Barclays Bank PLC), as the administrative agent and collateral agent thereunder (collectively, the "**Pre-Petition First Lien Agent**"), the lenders party thereto (the "**Pre-Petition First Lien Lenders**"), and the other parties thereto (as amended, restated, amended and restated, supplemented or otherwise modified from time to time through the Petition Date, the "**Pre-Petition First Lien Credit Agreement**") and (ii) that certain Second Lien Credit Agreement dated April 28, 2014, among the Borrower, the other borrowers party thereto, Wilmington Savings Fund Society, FSB (as successor in interest to Barclays Bank PLC), as the administrative agent and collateral agent thereunder (collectively, the "**Pre-Petition Second Lien Agent**" and together with the Pre-Petition First Lien Agent, the "**Pre-Petition Agents**"), the lenders party thereto (the "**Pre-Petition Second Lien Lenders**" and together with the Pre-Petition First Lien Lenders, the "**Pre-Petition Lenders**"), and the other parties thereto (as amended, restated, amended and restated, supplemented or otherwise modified from time to time through the Petition Date, the "**Pre-Petition Second Lien Credit Agreement**" and together with the Pre-Petition First Lien Credit Agreement, the "**Pre-Petition Credit Agreements**");

WHEREAS, as of the close of business on June [ ], 2020, (i) the Pre-Petition First Lien Lenders under the Pre-Petition First Lien Credit Agreement were owed approximately \$1,369,925,000 in outstanding principal amount plus interest, fees, costs and expenses and all other "Obligations" (as defined under the Pre-Petition First Lien Credit Agreement) under the Pre-Petition First Lien Credit Agreement and (ii) the Pre-Petition Second Lien Lenders under the Pre-Petition Second Lien Credit Agreement were owed approximately \$670,000,000 in outstanding principal amount plus interest, fees, costs and expenses and all other "Obligations" (as defined under the Pre-Petition Second Lien Credit Agreement) under the Pre-Petition Second Lien Credit Agreement;

WHEREAS, the "Obligations" under and as defined in each of the Pre-Petition Credit Agreements are secured by a security interest in substantially all of the existing and after-acquired assets of the Borrower and the Guarantors, subject to the exceptions set forth therein;

WHEREAS, the Borrower has requested, and, upon the terms set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a senior secured term loan credit facility of \$60,000,000 (the "Term Loans"), which will be funded into the Loan Proceeds Account on the Funding Date, subject to certain conditions set forth herein, pursuant to the DIP Order and the Canadian DIP Recognition Order, to fund the costs and expenses related to the Chapter 11 Cases and the Canadian Recognition Proceeding and the general corporate purposes and working capital requirements of the Parent and its Subsidiaries during the pendency of the Chapter 11 Cases, solely pursuant to and in accordance with this Agreement and the Approved Budget;

WHEREAS, subject to the terms hereof, the DIP Order and the Canadian DIP Recognition Order, the Borrower and the Guarantors have agreed to secure all of their Obligations under the Credit Documents by granting to the Collateral Agent, for the benefit of the Administrative Agent, the Collateral Agent and the other Secured Parties, a security interest in and lien upon substantially all of their existing and after-acquired personal property; and

WHEREAS, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows:

Section 1. Definitions

1.1 Defined Terms. As used herein, the following terms shall have the meanings specified in this Section 1.1 unless the context otherwise requires (it being understood that defined terms in this Agreement shall include in the singular number the plural and in the plural the singular):

"ABR" shall mean for any day a fluctuating rate per annum equal to the highest of (i) the Federal Funds Effective Rate *plus* 1/2 of 1%, (ii) the rate of interest in effect for such day as published in the Wall Street Journal (or comparable publication or service for publishing the "prime rate") as the "prime rate", and (iii) the rate per annum determined in the manner set forth in clause (e) of the definition of Eurocurrency Rate *plus* 1%; provided that notwithstanding the foregoing, in no event shall the ABR applicable to the Term Loans at any time be less than 2.00% per annum. Any change in the ABR due to a change in such rate published as the "prime rate" or in the Federal Funds Effective Rate or Eurocurrency Rate shall take effect at the opening of business on the day specified in the announcement of such change.

"ABR Loan" shall mean each Loan bearing interest based on the ABR.

"Actual Cash on Hand" shall mean unrestricted cash of the Credit Parties and its Subsidiaries (other than the restricted cash of the Receivables Subsidiary, including any cash collected in respect of receivables that is held as collateral for the Receivables Facility) deposited in commercial banks located in the United States (but not including the amounts deposited in the Loan Proceeds Account) and Canada or otherwise subject to a Control Agreement.

"Actual Cash Receipts" shall mean with respect to any period, the amount that corresponds to the amount of the line item "Cash Receipts" as determined by reference to the Approved Budget as then in effect.

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**“Actual Liquidity”** shall mean as of any date of determination, as the context requires, for the Credit Parties and their Subsidiaries, (i) (a) the amount of Actual Cash on Hand plus (b) the amount of the proposed Withdrawal pursuant to any outstanding Withdrawal Notice *minus* (ii) the Unrestricted Cash on Hand.

**“Actual Operating Disbursement Amounts”** shall mean with respect to any period, the amount that corresponds to the line item “Total Operational Disbursements” in the Approved Budget as then in effect; provided, further, that in either case such amounts will not include Actual Restructuring Related Amounts.

**“Actual Restructuring Related Amounts”** shall mean with respect to any period, (a) the amount of financing, restructuring and professional fees during such period (including but not limited to, as reimbursement to any Secured Parties, the Specified Lender Advisors, the Crossholder Lender Advisors or the Agent Advisors, and including any fees payable to the United States Trustee or any other statutorily-appointed committee in the Chapter 11 Cases or court-officer in the Canadian Recognition Proceeding) that corresponds to the line item “Total Non-Operational Disbursements” as determined by reference to the Approved Budget as then in effect, (b) interest, fees and other amounts paid in respect of the Loans and (c) adequate protection payments in respect of professional fees for loans issued under the Pre-Petition Credit Agreements.

**“Ad Hoc Group of Crossholder Lenders”** shall mean those certain Lenders represented by the Crossholder Lender Advisors.

**“Ad Hoc Group of Lenders”** shall mean those certain Lenders represented by the Specified Lender Advisors.

**“Administrative Agent”** shall mean Wilmington Savings Fund Society, FSB, as the administrative agent for the Lenders under this Agreement and the other Credit Documents, or any successor administrative agent appointed pursuant to Section 12.9.

**“Administrative Agent’s Office”** shall mean the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 13.2 or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

**“Administrative Questionnaire”** shall have the meaning provided in Section 13.6(b)(ii)(D).

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

**“Affiliate”** shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

**“Affiliated Institutional Lender”** shall mean any Affiliate of the Sponsor that is either a bona fide debt fund or that extends credit or buys loans in the ordinary course of business.

**“Affiliated Lender”** shall mean a Lender that is the Sponsor or any Affiliate thereof (other than the Parent or any other Subsidiary of the Parent, or any Affiliated Institutional Lender).

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**“Agent Advisors”** shall mean Seward & Kissel LLP, as counsel, and such other firm or local counsel appointed on behalf of, collectively, the Administrative Agent and the Collateral Agent in each relevant material jurisdiction (which may include a single special counsel acting in multiple jurisdictions).

**“Agent Parties”** shall have the meaning provided in Section 13.17(b).

**“Agents”** shall mean the Administrative Agent and the Collateral Agent.

**“Agreement”** shall mean this Credit Agreement.

**“Agreement Currency”** shall have the meaning provided in Section 13.19.

**“AML Legislation”** shall mean the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws, applicable within Canada, including any rules, regulations, guidelines, ordinances, judgments or orders thereunder, as the same may be amended from time to time.

**“Anti-Terrorism Laws”** shall mean any law relating to terrorism, corruption, economic sanctions, or money laundering, including Executive Order No. 13224, the USA Patriot Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by the United States Treasury Department’s Office of Foreign Asset Control, the United Nations Security Council, the European Union, Her Majesty’s Treasury (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

**“Applicable Margin”** shall mean, on any date, with respect to each Term Loan that is an (i) ABR Loan, 6.50% per annum and (ii) Eurocurrency Loan, 7.50% per annum.

**“Approved Budget”** shall mean the then most current budget prepared by the Borrower and approved by the Required Lenders in accordance with Section 9.18.

**“Approved Budget Variance Report”** shall mean a report provided by the Borrower to the Administrative Agent, the Specified Lender Advisors and the Crossholder Lender Advisors (a) showing, in each case, on a line item by line item and a cumulative basis, the Actual Cash Receipts, the Actual Operating Disbursement Amounts and the Actual Restructuring Related Amounts as of the last day of the Variance Testing Period then most recently ended, noting therein (i) all variances, on a cumulative basis, from the Budgeted Cash Receipts and the Budgeted Operating Disbursement Amounts for such period as set forth in the Approved Budget as in effect for such period and (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance in such Variance Testing Period with the Permitted Variances and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such violation exists, setting forth the actions which the Borrower has taken or intend to take with respect thereto and (b) which such reports shall contain supporting information, satisfactory to the Required Lenders in their sole discretion (which satisfaction may be communicated via email by any of the Specified Lender Advisors).

**“Approved Fund”** shall mean any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

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“**Asset Sale**” shall mean:

(i) the sale, conveyance, transfer, or other disposition, in each case, which results in the permanent disposition of the subject property, whether in a single transaction or a series of related transactions, of property or assets (each a “**disposition**”) of the Parent or any Subsidiary, or

(ii) the issuance or sale of Equity Interests of any Subsidiary (other than preferred stock of Subsidiaries issued in compliance with Section 10.1), whether in a single transaction or a series of related transactions.

“**Asset Sale Prepayment Event**” shall mean any Asset Sale; provided that, with respect to any Asset Sale, the Parent and its Subsidiaries shall not be required to make any prepayment otherwise required by Section 5.2 unless and until the aggregate amount of Net Cash Proceeds from all such Asset Sales exceeds \$250,000 (the “**Asset Sale Prepayment Trigger**”), but then from all Net Cash Proceeds (excluding amounts below the Asset Sale Prepayment Trigger).

“**Assignment and Acceptance**” shall mean an assignment and acceptance substantially in the form of Exhibit E, or such other form as may be approved by the Required Lenders (which approval may be communicated via an email from any of the Specified Lender Advisors) and the Administrative Agent.

“**Attorney Costs**” shall mean all reasonable and documented out-of-pocket fees, expenses and disbursements of any law firm or other external legal counsel.

“**Authorized Officer**” shall mean, with respect to any Person, any individual holding the position of chairman of the board (if an officer), any executive officer, the Chief Executive Officer, the Chief Administrative Officer, the Chief Financial Officer, the Treasurer, the Chief People Officer, the Vice President-Finance, a Senior Vice President, a Director, a Manager, or any other senior officer or agent with express authority to act on behalf of such Person designated as such by the board of directors or other managing authority of such Person.

“**Bail-In Action**” shall mean 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**” shall mean, (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 or regulation for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule or (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Bank Account**” shall mean any Deposit Account, Securities Account and Commodity Account of any Credit Party, each as defined in the UCC, or, if such account is located in Canada, shall mean any Securities Account and Futures Account, each as defined in the PPSA, and any account maintained for the deposit of funds with a Canadian bank accepting funds for deposit in Canada.

“**Bankruptcy Code**” shall mean Chapter 11 of Title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

“**Bankruptcy Court**” shall mean the “Bankruptcy Court” as defined in the recitals to this agreement or such other court having jurisdiction over the Chapter 11 Cases.

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“**Bankruptcy Rules**” shall mean the Federal Rules of Bankruptcy Procedure, as the same may be amended from time to time be in effect and applicable to the Chapter 11 Cases.

“**Benefited Lender**” shall have the meaning provided in Section 13.9(a).

“**BIA**” means the *Bankruptcy and Insolvency Act (Canada)*, RSC 1985, c. B-3, as amended.

“**Board**” shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

“**Borrower**” shall have the meaning provided in the preamble to this Agreement.

“**Borrower Materials**” shall have the meaning provided in Section 13.17(b).

“**Borrowing**” shall mean the Term Loans made on the Funding Date.

“**Budgeted Borrower Professional Fees**” shall mean with respect to any period, the amount that corresponds to the line item “Professional Fees” in the Approved Budget, as then in effect.

“**Budgeted Cash Receipts**” shall mean with respect to any period, the amount that corresponds to the line item “Cash Receipts” in the Approved Budget, as then in effect.

“**Budgeted Liquidity**” shall mean as of any date of determination, as the context requires, for the Credit Parties, the amounts set forth as of such date of unrestricted cash of the Credit Parties and its Subsidiaries in the Approved Budget.

“**Budgeted Operating Disbursement Amounts**” shall mean with respect to any period, the amount that corresponds to the line item “Total Operational Disbursements” in the Approved Budget as then in effect; provided, further, that in either case such amounts will not include Budgeted Restructuring Related Amounts.

“**Budgeted Restructuring Related Amounts**” shall mean with respect to any period, (a) the amount of financing, restructuring and professional fees for such period (including but not limited to, as reimbursement to any Secured Parties, the Specified Lender Advisors, the Crossholder Lender Advisors or the Agent Advisors, and including any fees payable to the United States Trustee or any other statutorily-appointed committee in the Chapter 11 Cases or court-officer in the Canadian Recognition Proceeding) that corresponds to the line item “Total Non Operational Disbursements” as determined by reference to the Approved Budget as then in effect, (b) interest, fees and other amounts paid in respect of the Loans and (c) adequate protection payments in respect of professional fees for loans issued under the Pre-Petition Credit Agreements.

“**Business Day**” shall mean any day excluding Saturday, Sunday, and any other day on which banking institutions in New York City and Wilmington, Delaware are authorized by law or other governmental actions to close, and, if such day relates to any interest rate settings as to a Eurocurrency Loan, any fundings, disbursements, settlements, and payments in respect of any such Eurocurrency Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Loan, such day shall be a day on which dealings in deposits in Dollars are conducted by and between banks in the applicable London interbank market.

“**Canadian Bankruptcy and Insolvency Law**” shall mean any federal, provincial or territorial Canadian law from time to time in effect relating to bankruptcy, winding-up, insolvency, reorganization,

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receivership, plans of arrangement or relief or protection of debtors, including the BIA, the CCAA, the *Winding up and Restructuring Act* (Canada), the *Business Corporations Act* (New Brunswick) and any other applicable corporate legislation.

**“Canadian Bankruptcy Court”** has the meaning set forth in the recitals of this Agreement.

**“Canadian Benefit Plan”** shall mean any pension, retirement, savings, profit sharing, health, medical, dental, disability, life insurance, welfare or other employee benefit plan, program, policy or practice, whether written or oral, funded or unfunded, registered or unregistered, which is sponsored, maintained or contributed to or required to be contributed to by any Credit Party or under which any Credit Party has any actual or potential liability in respect of its employees or former employees in Canada, other than a Canadian Pension Plan or a Canadian Statutory Plan.

**“Canadian Confirmation Order”** shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Confirmation Order in Canada, which order shall be in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders in either case may be communicated in each case via an email from any of the Specified Lender Advisors).

**“Canadian Defined Benefit Plan”** shall mean a Canadian Pension Plan which contains a “defined benefit provision” as defined in subsection 147.1(1) of the Income Tax Act (Canada).

**“Canadian DIP Recognition Order”** shall mean the Canadian Supplemental Order, unless the Canadian Final Order shall have been entered, in which case it means the Canadian Final Order.

**“Canadian Final Order”** shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Final Order in Canada and providing for a super priority charge over the Canadian Property, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders in either case may be communicated in each case via an email from any of the Specified Lender Advisors).

**“Canadian Interim Order”** shall mean, collectively, the Canadian Recognition Order and the Canadian Supplemental Order.

**“Canadian Pension Plan”** shall mean a “registered pension plan”, as that term is defined in subsection 248(1) of the *Income Tax Act* (Canada), which is or was sponsored, administered or contributed to, or required to be contributed to by, any Credit Party or under which any Credit Party has any actual or potential liability.

**“Canadian Property”** shall mean all current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of the Debtors located in Canada.

**“Canadian Recognition Order”** shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing the Chapter 11 Cases as “foreign main proceedings” under Part IV of the CCAA, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the

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Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

**“Canadian Recognition Proceeding”** has the meaning set forth in the recitals of this Agreement.

**“Canadian Statutory Plan”** shall mean any government sponsored pension, employment insurance, parental insurance or worker compensation plan.

**“Canadian Supplemental Order”** shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Interim Order in Canada, providing for the CCAA DIP Lenders’ Charge, granting a stay of proceedings in respect of the Debtors in Canada and granting certain customary additional relief in the Canadian Recognition Proceeding, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

**“Capital Lease”** shall mean, as applied to any Person, any lease of any property (whether real, personal, or mixed) by that Person as lessee that, in conformity with GAAP, is, or is required to be, accounted for as a capital lease on the balance sheet of that Person.

**“Capital Stock”** shall mean (i) in the case of a corporation, corporate stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights, or other equivalents (however designated) of corporate stock, (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited), and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person (it being understood and agreed, for the avoidance of doubt, that “cash-settled phantom appreciation programs” in connection with employee benefits that do not require a dividend or distribution shall not constitute Capital Stock).

**“Capitalized Lease Obligation”** shall mean, at the time any determination thereof is to be made, the amount of the liability in respect of a Capital Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

**“Carve Out”** has the meaning assigned to such term in the DIP Order.

**“Carve Out Trigger Notice”** has the meaning assigned to such term in the DIP Order.

**“Cash Equivalents”** shall mean:

- (i) Dollars,
- (ii) (a) Euro, Pounds Sterling, Canadian Dollars, or any national currency of any Participating Member State in the European Union or (b) local currencies held from time to time in the ordinary course of business,
- (iii) securities issued or directly and fully and unconditionally guaranteed or insured by the United States government, Canadian government, Her Majesty’s Government, or any country that is a member state of the European Union or any agency or instrumentality thereof the securities

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of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition,

(iv) certificates of deposit, time deposits, and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year, and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than \$250,000,000 in the case of U.S. banks and \$100,000,000 (or the Dollar Equivalent as of the date of determination) in the case of foreign banks,

(v) repurchase obligations for underlying securities of the types described in clauses (iii), (iv), and (ix) entered into with any financial institution meeting the qualifications specified in clause (iv) above,

(vi) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P and in each case maturing within 24 months after the date of creation thereof,

(vii) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized ratings agency) and in each case maturing within 24 months after the date of creation or acquisition thereof,

(viii) readily marketable direct obligations issued by the federal government, any state, commonwealth, or territory of the United States, or the federal government or any province of Canada, in each case, any political subdivision or taxing authority thereof having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of 24 months or less from the date of acquisition,

(ix) Indebtedness or preferred stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's with maturities of 24 months or less from the date of acquisition,

(x) solely with respect to any Foreign Subsidiary: (a) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (b) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than 24 months from the date of acquisition, and (c) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank, in each case, customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by such Foreign Subsidiary organized in such jurisdiction,

(xi) in the case of investments by any Foreign Subsidiary or investments made in a country outside the United States, Cash Equivalents shall also include investments of the type and maturity

described in clauses (i) through (ix) above of foreign obligors, which investments have ratings, described in such clauses or equivalent ratings from comparable foreign rating agencies, and

(xii) investment funds investing 90% of their assets in securities of the types described in clauses (i) through (ix) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (i) and (ii) above; provided that such amounts are converted into any currency listed in clauses (i) and (ii) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

**“Cash Flow Forecast”** shall mean a consolidated weekly cash flow forecast commencing on the Wednesday before the Closing Date through January 27, 2021, which shall set forth, among other things, receipts, operating disbursements, liquidity and restructuring related amounts for such period.

**“Cash Management Order”** shall mean the order of the Bankruptcy Court entered in the Chapter 11 Cases after the “first day” hearing, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via an email from any of the Specified Lender Advisors), which among other matters authorizes the Debtors to maintain their existing cash management and treasury arrangements (as set forth in the Pre-Petition Term Loan Agreement) or such other arrangements as shall be acceptable to the Required Lenders in all material respects (which acceptance may be communicated via an email from any of the Specified Lender Advisors).

**“Casualty Event”** shall mean, with respect to any property of any Person, any loss of or damage to, or any condemnation or other taking by a Governmental Authority of, such property for which such Person or any of its Subsidiaries receives insurance proceeds or proceeds of a condemnation award in respect of any equipment, fixed assets, or real property (including any improvements thereon) to replace or repair such equipment, fixed assets, or real property; provided that, with respect to any Casualty Event, the Parent and its Subsidiaries shall not be required to make any prepayment otherwise required by Section 5.2 unless and until the aggregate amount of Net Cash Proceeds from all such Casualty Events, after giving effect to reinvestment rights set forth herein, exceeds \$250,000 (the **“Casualty Prepayment Trigger”**), but then from all Net Cash Proceeds (excluding amounts below the Casualty Prepayment Trigger).

**“CCAA”** means the Companies’ Creditors Arrangement Act (Canada), R.S.C 1985, c. C-36.

**“CCAA Administration Charge”** means the “Administration Charge” as defined in the Canadian Supplemental Order, in an amount not to exceed CAD\$150,000.

**“CCAA DIP Lenders’ Charge”** means the “DIP Lenders’ Charge” as defined in the Canadian Supplemental Order.

**“CCAA Filing Date”** shall mean the date on which an application to commence the Canadian Recognition Proceeding is made to the Canadian Bankruptcy Court.

**“Change in Law”** shall mean (i) the adoption of any law, treaty, order, policy, rule, or regulation after the Closing Date, (ii) any change in any law, treaty, order, policy, rule, or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (iii) compliance by any Lender with any guideline, request, directive, or order issued or made after the Closing Date by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law), including, for avoidance of doubt any such adoption, change or compliance in respect of (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules,

regulations, guidelines, or directives thereunder or issued in connection therewith and (b) all requests, rules, guidelines, requirements, 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 pursuant to Basel III regardless of the date enacted, adopted or issued.

**“Change of Control”** shall mean and be deemed to have occurred if (i) the Permitted Holders shall at any time not beneficially own, in the aggregate, directly or indirectly, at least a majority of the voting power of the outstanding voting stock of the Parent; (ii) [reserved]; (iii) at any time, a Change of Control under clause (i) of either Pre-Petition Credit Agreement shall have occurred; or (iv) the Parent shall cease to beneficially own, directly or indirectly, 100% of the issued and outstanding equity interests of the Borrower. Notwithstanding the foregoing, the commencement of the Chapter 11 Cases shall not constitute a “Change of Control” hereunder.

**“Chapter 11 Cases”** has the meaning set forth in the recitals of this Agreement.

**“Chapter 11 Plan”** shall mean a chapter 11 plan of liquidation or reorganization in the Chapter 11 Cases in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders in all respects (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors) and consented to by the Administrative Agent and the Required Lenders (which consent of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors), confirmed by an order (in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors) of the Bankruptcy Court under the Chapter 11 Cases (which consent or satisfaction in each case of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors), containing, among other things, (i) a release in favor of the Administrative Agent and the Lenders and their respective affiliates on the terms set forth in the RSA, and (ii) provisions with respect to the settlement or discharge of all claims and other debts and liabilities on the terms set forth in the RSA, as such plan of liquidation or reorganization may be modified, altered, amended or otherwise changed or supplemented with the prior written consent of the Administrative Agent and the Required Lenders (which consent of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors).

**“Chapter 11 Plan Disclosure Statement”** shall mean a disclosure statement to accompany the Chapter 11 Plan and provide adequate information to voting creditors as provided by section 1125(a)(1) in the Bankruptcy Code.

**“Charterhouse”** shall mean Charterhouse Capital Partners LLP.

**“Closing Date”** shall mean the date on which the conditions precedent set forth in Section 6.1 shall have been satisfied or waived, which date is June [ ], 2020.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time.

**“Collateral”** shall mean (i) all property pledged, charged, assigned or mortgaged or purported to be pledged, charged, assigned or mortgaged pursuant to the Security Documents, excluding in all events Excluded Property and (ii) (x) the “DIP Collateral” referred to in the DIP Order, it being understood that “Collateral” shall include all such “DIP Collateral” irrespective of whether any such property was excluded pursuant to the Pre-Petition Credit Documents and (y) the Canadian Property; provided that the Collateral shall in no event include Excluded Property.

**“Collateral Agent”** shall mean Wilmington Savings Fund Society, FSB, as collateral agent under the Security Documents, or any successor collateral agent appointed pursuant to Section 12.9.

**“Commitment Fee”** shall have the meaning provided in Section 4.1(a).

**“Commitments”** shall mean, with respect to each Lender (to the extent applicable), such Lender’s Term Loan Commitment.

**“Communications”** shall have the meaning provided in Section 13.17.

**“Company Advisors”** shall mean (i) Alix Partners and (ii) Houlhan Lokey.

**“Confidential Information”** shall have the meaning provided in Section 13.16.

**“Confirmation Order”** shall mean the order of the Bankruptcy Court confirming the Chapter 11 Plan in the Chapter 11 Cases (including, if applicable, to the extent combined with an order approving the Chapter 11 Plan Disclosure Statement) in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders (which satisfaction in each case of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors).

**“Contractual Requirement”** shall have the meaning provided in Section 8.3.

**“Control Agreement”** shall mean an account control agreement that establishes the Collateral Agent’s “control” over a Bank Account within the meaning of Section 8-106 or 9-104 of the UCC, as applicable, each in form and substance reasonably satisfactory to the Required Lenders (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors), the Collateral Agent and the Borrower.

**“Credit Documents”** shall mean this Agreement, the Fee Letter, the Escrow Agreement, the Guarantees, the Security Documents, the Intercompany Note, any promissory notes issued by the Borrower pursuant hereto, any Withdrawal Notice, any other agreements, documents and instruments providing for or evidencing any other Obligations, and any other document or instrument executed or delivered at any time in connection with any Obligations, including any joinder agreement among holders of Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented, modified, renewed or extended from time to time.

**“Credit Event”** shall mean the Closing Date, the Funding Date and each Withdrawal Date.

**“Credit Party”** shall mean the Parent, the Borrower, and the other Guarantors.

**“Crossholder Lender Advisors”** shall mean (a) Milbank LLP, as legal counsel and (b) Moelis & Company LLC, as financial advisor.

**“Debt Incurrence Prepayment Event”** shall mean any issuance or incurrence by the Parent or any Subsidiary of any Indebtedness not otherwise permitted to be incurred pursuant to Section 10.1 of this Agreement.

**“Debtor Relief Laws”** shall mean the Bankruptcy Code of the United States, Canadian Bankruptcy and Insolvency Law, the Insolvency Act 1986 under the laws of England and Wales, the provisions of law implemented pursuant to the Corporate Insolvency and Governance Bill dated 20 March 2020 under the laws of England and Wales and all other liquidation, conservatorship, bankruptcy, general assignment for

the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, administration, examinership or similar debtor relief laws of the U.S. or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

**“Default”** shall mean any event, act, or condition that with notice or lapse of time, or both, would constitute an Event of Default.

**“Defaulting Lender”** shall mean any Lender whose acts or failure to act, whether directly or indirectly, cause it to meet any part of the definition of Lender Default.

**“Deferred Net Cash Proceeds”** shall have the meaning provided such term in the definition of Net Cash Proceeds.

**“Designated Jurisdiction”** shall mean any country or territory to the extent that such country or territory itself is the subject of any Sanction.

**“DIP Facility”** shall mean the funding of the Term Loans on the Funding Date.

**“DIP Order”** shall mean the Interim Order, unless the Final Order shall have been entered, in which case it means the Final Order.

**“Direction of the Required Lenders”** shall mean a written direction or instruction from Lenders constituting the Required Lenders which may be in the form of an email or other form of written communication and which may come from any of the Specified Lender Advisors (or any other Lender Advisor selected by the Required Lenders and designated in writing to the Administrative Agent), it being understood and agreed that the Administrative Agent and/or the Collateral Agent and/or the Escrow Agent can conclusively rely on any such written direction or instruction from such Specified Lender Advisor or designated Lender Advisor at the direction of the Required Lenders.

**“disposition”** shall have the meaning assigned such term in clause (i) of the definition of Asset Sale.

**“Disqualified Stock”** shall mean, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Qualified Stock), other than as a result of a change of control, asset sale, or similar event, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely for Qualified Stock), other than as a result of a change of control, asset sale, or similar event, in whole or in part, in each case, prior to the date that is 91 days after the Maturity Date; provided that (i) if such Capital Stock is issued to any plan for the benefit of employees of the Parent or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Parent or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death, or disability and (ii) no Qualified PECS shall constitute Disqualified Stock.

**“Dollar Equivalent”** shall mean, at any time, (i) with respect to any amount denominated in Dollars, such amount, and (ii) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars, as determined by the Administrative Agent on the basis of the Spot Rate (determined on the most recent date of determination) for the purchase of Dollars with such currency.

**“Dollars”** and **“\$”** shall mean dollars in lawful currency of the United States.

**“EEA Financial Institution”** shall mean (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”** shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“Environmental Claims”** shall mean any and all actions, suits, orders, decrees, demand letters, claims, notices of noncompliance or potential responsibility or violation, or proceedings pursuant to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereinafter, **“Claims”**), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial, or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation, or injunctive relief relating to the presence Release or threatened Release of Hazardous Materials or arising from alleged injury or threat of injury to health or safety (to the extent relating to human exposure to Hazardous Materials), or the environment including, without limitation, ambient air, indoor air, surface water, groundwater, soil, land surface and subsurface strata, and natural resources such as wetlands.

**“Environmental Law”** shall mean any applicable federal, state, provincial, territorial, foreign, or local statute, law, rule, regulation, ordinance, code, and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree, or judgment, relating to pollution or protection of the environment, including, without limitation, ambient air, indoor air, surface water, groundwater, soil, land surface and subsurface strata and natural resources such as flora, fauna, or wetlands, or protection of human health or safety (to the extent relating to human exposure to Hazardous Materials) and including those relating to the generation, storage, treatment, transport, Release, or threat of Release of Hazardous Materials.

**“Equity Interest”** shall mean Capital Stock and all warrants, options, or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“ERISA Affiliate”** shall mean any trade or business (whether or not incorporated) that, together with any Credit Party or any Subsidiary thereof, is treated as a single employer under Section 414 (b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

**“ERISA Event”** shall mean (i) the failure of any Plan to comply with any provisions of ERISA and/or the Code (and applicable regulations under either) or with the terms of such Plan; (ii) the existence

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with respect to any Plan of a non-exempt Prohibited Transaction; (iii) any Reportable Event; (iv) the failure of any Credit Party, any Subsidiary thereof or ERISA Affiliate to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived; (v) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (vi) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (vii) the termination of, or the appointment of a trustee to administer, any Pension Plan or the incurrence by any Credit Party, any Subsidiary thereof or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, including but not limited to the imposition of any Lien in favor of the PBGC or any Pension Plan; (viii) the receipt by any Credit Party, any Subsidiary thereof or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA; (ix) the failure by any Credit Party, any Subsidiary thereof or any of its ERISA Affiliates to make any required contribution to a Multiemployer Plan; (x) the incurrence by any Credit Party, any Subsidiary thereof or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Pension Plan (or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA) or Multiemployer Plan; (xi) the receipt by any Credit Party, any Subsidiary thereof or any of its ERISA Affiliates of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent or in Reorganization, in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or terminated (within the meaning of Section 4041A of ERISA); or (xii) the failure by any Credit Party, any Subsidiary thereof, or any of its ERISA Affiliates to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA.

**"Escrow Agent"** shall mean the Escrow Agent under the Escrow Agreement, which shall initially be Wilmington Savings Fund Society, FSB, in its capacity as Escrow Agent.

**"Escrow Agreement"** shall mean an Escrow Agreement dated as of the Closing Date (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) among the Borrower, the Escrow Agent and the Administrative Agent for and on behalf of the Lenders relating to the Loan Proceeds Account.

**"EU Bail-In Legislation Schedule"** shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**"Eurocurrency Loan"** shall mean any Loan bearing interest at a rate determined by reference to the Eurocurrency Rate.

**"Eurocurrency Rate"** shall mean, for any Interest Period with respect to a Eurocurrency Loan, the rate per annum equal to the offered rate administered by ICE Benchmark Administration ("**LIBOR**") or a comparable or successor rate, which rate is approved by the Administrative Agent (at the Direction of the Required Lenders), on the applicable Reuters screen page (or such other commercially available source providing such quotations of LIBOR as designated by the Administrative Agent (at the Direction of the Required Lenders) from time to time) at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to one month commencing that date; provided that, in no event shall the Eurocurrency Rate be less than 1.00% per annum.

**"European Union Regulation"** shall have the meaning given to such term in Section 8.18.

**“Event of Default”** shall have the meaning provided in Section 11.

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

**“Excluded Accounts”** means, as to any Credit Party, (i) all Deposit Accounts or Securities Accounts that are used solely to hold cash, Cash Equivalents and other assets comprised solely of (a) funds used for payroll and payroll taxes and other employee benefit payments to any Credit Party’s officers, directors, employees or consultants, and (b) all taxes required to be collected, remitted or withheld (including, without limitation, federal, state, provincial, territorial and foreign withholding taxes), including, without limitation, the employer’s share thereof, (ii) any Deposit Account or Securities Accounts or Futures Account (other than any account maintained for the deposit of funds with a Canadian bank accepting funds for deposit in Canada) that, individually, contain an average daily balance of less than \$50,000 or in the aggregate, contain an average daily balance of less than \$150,000 and (iii) any Securities Account and Futures Account, each as defined in the PPSA, and any account maintained for the deposit of funds with a Canadian bank accepting funds for deposit in Canada that in the aggregate, contain an average daily balance of less than \$250,000.

**“Excluded Property”** shall mean (a) [reserved], (b) [reserved], (c) any governmental licenses or state or local franchises, charters and authorizations to the extent security interest is prohibited by a Requirement of Law (excluding the proceeds therefrom), (d) pledges and security interests prohibited or restricted by any Requirements of Law, (e) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, (f) [reserved], (g) any assets where the cost of obtaining a security interest therein (including any tax effects relating thereto) exceeds the practical benefit to the Lenders affected thereby as determined by the Required Lenders, (h) any Capital Stock of any Receivables Subsidiary, (i) [reserved], (j) [reserved] and (k) [reserved]; provided, however, that Excluded Property shall not include any proceeds, substitutions or replacements of any Excluded Property referred to in clauses (a) through (k) (unless such proceeds, substitutions or replacements would constitute Excluded Property referred to in clauses (a) through (k)).

**“Excluded Subsidiary”** shall mean after giving effect to the DIP Order, (a) [reserved], (b) any Subsidiary of the Parent that is prohibited by any applicable Requirement of Law from guaranteeing or granting Liens to secure the Obligations at the time such Subsidiary becomes a Subsidiary (and for so long as such restriction or any replacement or renewal thereof is in effect), (c) any Receivables Subsidiary, or (d) [reserved].

**“Excluded Taxes”** shall mean, with respect to any Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder or under any other Credit Document, (i) Taxes imposed on or measured by its net income or net profits, franchise (and similar) Taxes (imposed in lieu of net income Taxes) or branch profits Taxes (in each case, however denominated, and including (for the avoidance of doubt) any backup withholding in respect thereof under Section 3406 of the Code or any similar provision of state, local, or foreign law), in each case by a jurisdiction (including any political subdivision thereof) as a result of such recipient being organized in, having its principal office in, or in the case of any Lender, having its applicable lending office in, such jurisdiction, or as a result of any other present or former connection with such jurisdiction (other than any such connection arising solely from this Agreement or any other Credit Documents or any transactions contemplated thereunder), (ii) other than in the case of a Lender that is an assignee pursuant to a request by the Borrower under Section 13.7 (or that designates a new lending office pursuant to a request by the Borrower), any United States federal withholding Tax imposed on amounts payable to or for the account of a Lender pursuant to laws in force at the time such Lender acquires an interest in (or becomes a party to) any Credit Document (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the designation of a new lending office (or assignment), to receive additional amounts from the



applicable Credit Parties with respect to such withholding Tax pursuant to Section 5.4, (iii) any withholding Taxes attributable to a recipient's failure to comply with Section 5.4(e), (iv) [reserved] or (v) any withholding Tax imposed under FATCA.

**"Fair Market Value"** shall mean with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as determined in good faith by the Borrower.

**"FATCA"** shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder, official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any amended or successor version described above), and any intergovernmental agreements (or related legislation or official administrative rules or practices) implementing the foregoing.

**"FCPA"** shall have the meaning provided in Section 8.20(c).

**"Federal Funds Effective Rate"** shall mean, for any day, the weighted average of the per annum rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published on the next succeeding Business Day by the Federal Reserve Bank of New York; provided that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to a financial institution selected by the Required Lenders (in consultation with the Borrower) on such day on such transactions, which such rate shall be administratively feasible for the Administrative Agent.

**"Fee Letter"** shall mean that certain Fee Letter dated the Closing Date between Wilmington Savings Fund Society, FSB and the Borrower.

**"Fees"** shall mean all amounts payable pursuant to, or referred to in, Section 4.1.

**"Final Hearing Date"** shall mean the date on which the Final Order is entered by the Bankruptcy Court.

**"Final Order"** shall mean an order entered by the Bankruptcy Court approving the DIP Facility on a final basis under the Bankruptcy Code, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Required Lenders (which satisfaction of the Required Lender in each case may be communicated via email from any of the Specified Lender Advisors)), which order has not been reversed or stayed or is otherwise subject to a timely filed motion for a stay, rehearing, reconsideration, appeal or any other review without the consent of the Required Lenders (which consent of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors).

**"Financial Advisor Engagement Letters"** shall mean (i) that certain agreement executed as of April 1, 2019 between Greenhill & Co., LLC, the Parent and Gibson Dunn & Crutcher LLP and (ii) that certain agreement dated as of January 21, 2020 by and among Moelis & Company LLC, Milbank LLP, and the Parent.

**“Financial Officer”** shall mean the chief financial officer, principal accounting officer, treasurer or controller (or equivalent officer) of the Borrower.

**“Flood Insurance Laws”** shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

**“Flow of Funds Statement”** shall mean a flow of funds statement relating to payments to be made and credited by all of the parties on the Funding Date (including wire instructions therefor) as prepared by the Borrower and its financial advisor in consultation with (and approved by) the Administrative Agent and the Required Lenders (which such approval may be communicated via email from any of the Specified Lender Advisors).

**“Foreign Benefit Arrangement”** shall mean any employee benefit arrangement mandated by non-U.S. law that is maintained or contributed to by any Credit Party or any of its Subsidiaries.

**“Foreign Credit Party”** shall mean the Parent and each Guarantor that is a Foreign Subsidiary.

**“Foreign Law Security Filing”** shall mean any filing or notification required to be made in any registry of a territory outside of the U.S. in order to perfect any security interest created pursuant to the Security Documents.

**“Foreign Plan”** shall mean each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to U.S. law and is maintained or contributed to by any Credit Party or any of its Subsidiaries.

**“Foreign Plan Event”** shall mean, with respect to any Foreign Plan or Foreign Benefit Arrangement, (i) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by applicable law or by the terms of such Foreign Plan or Foreign Benefit Arrangement; (ii) the failure to register or loss of good standing (if applicable) with applicable regulatory authorities of any such Foreign Plan or Foreign Benefit Arrangement required to be registered; or (iii) the failure of any Foreign Plan or Foreign Benefit Arrangement to comply with any provisions of applicable law and regulations or with the terms of such Foreign Plan or Foreign Benefit Arrangement.

**“Foreign Pledge Agreement”** shall mean each (a) pledge agreement executed by any Credit Party that is listed on Schedule 1.1(a) and (b) each other pledge agreement executed by any Credit Party and governed by the laws of any jurisdiction (other than the United States) pursuant to Section 9.12 or 9.14 in form and substance reasonably satisfactory to the Required Lenders (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors) (other than, in each case, the Irish Security Documents).

**“Foreign Security Agreement”** shall mean each (a) security agreement executed by any Credit Party that is listed on Schedule 1.1(a) and (b) each other security agreement executed by any Credit Party pursuant to Section 9.12 or 9.14 in form and substance reasonably satisfactory to the Required Lenders (which agreement of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors) (other than, in each case, the Irish Security Documents).

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**"Foreign Subsidiary"** shall mean each Subsidiary of the Parent that is not a U.S. Subsidiary.

**"Full Payment"** or **"Pay in Full"** or **"Paid in Full"** shall mean, with respect to any Obligations, the indefeasible, full and complete cash payment thereof, including any interest, fees and other charges accruing during the Chapter 11 Cases. No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated as well.

**"Fund"** shall mean any Person (other than a natural Person) that is engaged or advises funds or other investment vehicles that are engaged in making, purchasing, holding, or investing in commercial loans and similar extensions of credit in the ordinary course.

**"Funding Date"** shall have the meaning set forth in Section 2.1.

**"GAAP"** shall mean generally accepted accounting principles in the United States, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Furthermore, at any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP and GAAP concepts shall thereafter be construed to refer to IFRS and corresponding IFRS concepts (except as otherwise provided in this Agreement); provided that any such election, once made, shall be irrevocable; provided, further, that any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Parent's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Borrower shall give written notice of any such election made in accordance with this definition to the Administrative Agent. For the avoidance of doubt, solely making an election (without any other action) referred to in this definition will not be treated as an incurrence of Indebtedness. Notwithstanding any other provision contained herein, the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations shall be determined in accordance with the definition of Capitalized Lease Obligations.

**"Governmental Authority"** shall mean any nation, sovereign, or government, any state, province, territory, or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, taxing, regulatory, or administrative functions of or pertaining to government, including a central bank or stock exchange.

**"Granting Lender"** shall have the meaning provided in Section 13.6(g).

**"Guarantee"** shall mean (i) the Debtor-in-Possession Guarantee dated as of the Closing Date made by each Guarantor in favor of the Collateral Agent for the benefit of the Secured Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time and (ii) any other guarantee of the Obligations made by a Subsidiary in form and substance reasonably acceptable to the Required Lenders (which satisfaction may be communicated by via email from any of the Specified Lender Advisors).

**"guarantee obligations"** shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any primary obligor in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (i) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (ii) to advance or supply funds

(a) for the purchase or payment of any such Indebtedness or (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities, or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness, or (iv) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; provided, however, that the term guarantee obligations shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations or product warranties in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any guarantee obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such guarantee obligation 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"** shall mean (i) each Subsidiary of the Parent that is party to a Guarantee on the Closing Date, (ii) each Subsidiary of the Parent that becomes a party to a Guarantee after the Closing Date pursuant to Section 9.11 or otherwise and (iii) the Parent; provided that (i) in no event shall any Excluded Subsidiary be required to be a Guarantor (unless such Subsidiary is no longer an Excluded Subsidiary) (ii) in no event shall any Immaterial Subsidiary be required to be a Guarantor (unless expressly requested by the Required Lenders in writing after the Closing Date) and (iii) in no event shall any Subsidiary that is described in clause (b) of the definition of "Excluded Subsidiary" be a Guarantor.

**"Hazardous Materials"** shall mean (i) any petroleum or petroleum products, radioactive materials, friable asbestos, polychlorinated biphenyls, and radon gas; (ii) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any Environmental Law; and (iii) any other chemical, material, or substance, which is prohibited, limited, or regulated due to its dangerous or deleterious properties or characteristics by, any Environmental Law.

**"Hedge Agreements"** shall mean (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

**"IFRS"** shall have the meaning given such term in the definition of GAAP.

**"Immaterial Subsidiary"** shall mean any Foreign Subsidiary as of the Closing Date, except to the extent that such Subsidiary is organized under the laws of Canada or any province thereof, Ireland, or England and Wales.

**"Impacted Loans"** shall have the meaning provided in Section 2.10(a).

“**Incur**” shall have the meaning provided in Section 10.1.

“**Indebtedness**” shall mean, with respect to any Person, (i) any indebtedness (including principal and premium) of such Person, whether or not contingent (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures, or similar instruments or letters of credit or bankers’ acceptances (or, without double counting, reimbursement agreements in respect thereof), (c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), or (d) representing any hedging obligations, if and to the extent that any of the foregoing Indebtedness (other than letters of credit and hedging obligations) would appear as a net liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; provided that Indebtedness of any direct or indirect parent company appearing upon the balance sheet of the Parent solely by reason of push down accounting under GAAP shall be excluded, (ii) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (i) of another Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business, and (iii) to the extent not otherwise included, the obligations of the type referred to in clause (i) of another Person secured by a Lien on any asset owned by such Person, whether or not such Indebtedness is assumed by such Person. The amount of Indebtedness of any Person for purposes of clause (iii) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the Fair Market Value of the property encumbered thereby as determined by such Person in good faith.

“**Indemnified Liabilities**” shall have the meaning provided in Section 13.5(a).

“**Indemnified Person**” shall have the meaning provided in Section 13.5(a).

“**Indemnified Taxes**” shall mean (a) all Taxes, other than Excluded Taxes, imposed on or with respect to any payment by or on account of any obligation of any Credit Party hereunder or under any other Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

“**Initial Approved Budget**” shall mean the Approved Budget attached hereto as Exhibit B on the Closing Date; provided that, for the avoidance of doubt, the Initial Approved Budget shall not contemplate or include the funding or prefunding of any executive retention plan.

“**Initial Investors**” shall mean CCP IX LP No. 1, CCP IX LP No. 2 and CCP IX LP Co-Investment LP, and each of their respective Affiliates (excluding any operating portfolio companies of the foregoing).

“**Insolvent**” shall mean, with respect to any Multiemployer Plan, the condition that such Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA.

“**Intellectual Property**” shall mean all U.S. and non-U.S. intellectual property in all jurisdictions throughout the world, including all (i) (a) patents; (b) copyrights and copyrightable works; (c) trademarks, service marks, trade names, logos, trade dress, and other indicia of origin; (d) trade secrets and know how; and (e) all other intellectual property rights in inventions, processes, developments, technology, software (both in source code and/or object code form), graphics, advertising materials, labels, package designs, website content, photographs, designs, data and databases and confidential, proprietary or non-public information; and, in each case, (a)–(e), including all registrations and applications to register the foregoing; and (ii) all rights, priorities and privileges related thereto and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds (including in the form of royalty or settlement payments) therefrom.

**"Intercompany Note"** shall mean the amended and restated intercompany demand promissory note dated as of the Closing Date substantially in the form of Exhibit I delivered to the Administrative Agent.

**"Interest Period"** shall mean, with respect to any Loan, the interest period applicable thereto, as determined pursuant to Section 2.9.

**"Interim Order"** shall mean an order entered by the Bankruptcy Court approving the DIP Facility on an interim basis under the Bankruptcy Code, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from any of the Specified Lender Advisors), which order is not subject to a stay, injunction or other limitation not approved by the Administrative Agent and the Required Lenders (which satisfaction of the Required Lenders may be communicated in each case via an email from any of the Specified Lender Advisors).

**"Investment"** shall mean, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances, or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel, and similar advances to officers and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests, or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Parent in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment, or other amount received by any Credit Party or any of its Subsidiaries in respect of such Investment to the extent permitted under this Agreement (provided that, with respect to amounts received other than in the form of Cash Equivalents, such amount shall be equal to the Fair Market Value of such consideration).

**"Investment Grade Rating"** shall mean a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating organization.

**"Investment Grade Securities"** shall mean:

- (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents),
- (ii) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Credit Parties and their Subsidiaries,
- (iii) investments in any fund that invest at least 90% in investments of the type described in clauses (i) and (ii) which fund may also hold immaterial amounts of cash pending investment or distribution, and
- (iv) corresponding instruments in countries other than the United States customarily utilized for high-quality investments.

**"Irish Debenture"** shall mean the debenture governed by the laws of Ireland, executed by any Foreign Credit Party incorporated in Ireland or holding assets in Ireland in form and substance reasonably satisfactory to the Required Lenders (which approval of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors) and the Borrower.

**"Irish Obligors"** shall mean Pointwell Limited, Skillsoft Limited, Skillsoft Ireland Limited, Thirdforce Group Limited, SSI Investments I Limited, SSI Investments II Limited and SSI Investments III Limited.

**"Irish Security Documents"** shall mean the Irish Debenture and the Irish Share Charge and Security Assignment.

**"Irish Share Charge and Security Assignment"** shall mean the share charge and security assignment governed by the laws of Ireland, to be executed by any Credit Party (other than an Irish Obligor) that holds shares in an Irish Obligor or that is owed a debt by an Irish Obligor in form and substance satisfactory to the Required Lenders (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors) and the Borrower.

**"Judgment Currency"** shall have the meaning provided in Section 13.19.

**"Legal Reservations"** shall mean (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and principles of good faith and fair dealing, (b) applicable Debtor Relief Laws, (c) the existence of timing limitations with respect to the bringing of claims under applicable limitation laws and the defenses of acquiescence, set-off or counterclaim and the possibility that an undertaking to assume liability for, or to indemnify a Person against, non-payment of stamp duty may be void, (d) the principle that in certain jurisdictions and under certain circumstances a Lien granted by way of fixed charge may be re-characterized as a floating charge or that security purported to be constituted as an assignment may be re-characterized as a charge, (e) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty or considered to be interest and thus void, (f) the principle that may prohibit restrictions in relation to a voluntary prepayment of loans bearing floating rates of interest and may restrict charging prepayment fees for a voluntary prepayment of such loans, (g) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant, (h) the principle that the creation or purported creation of collateral over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which security has purportedly been created, (i) similar principles, rights and defenses under the laws of any relevant jurisdiction and (j) any other matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions under this Agreement

**"Lender"** shall have the meaning provided in the preamble to this Agreement.

**"Lender Advisors"** shall mean (x) the Specified Lender Advisors, (y) the Crossholder Lender Advisors and (z) any other financial advisor, auditor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Ad Hoc Group of Lenders or the Ad Hoc Group of Crossholder Lenders and/or the Required Lenders.

**"Lender Default"** shall mean (i) the refusal or failure of any Lender to make available its portion of any incurrence of Loans, which refusal or failure is not cured within one business day after the date of such refusal or failure, unless such Lender notifies the Administrative Agent in writing that such refusal or failure is the result of such Lender's good faith determination that one or more conditions precedent to

funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in writing) has not been satisfied, (ii) the failure of any Lender to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one business day of the date when due, unless the subject of a good faith dispute, (iii) a Lender has notified, in writing, the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations under this Agreement or has made a public statement to that effect with respect to its funding obligations under this Agreement or a Lender has publicly announced that it does not intend to comply with its funding obligations under other loan agreements, credit agreements or similar facilities generally, (iv) a Lender has failed to comply with its funding obligations under this Agreement or (v) a Distressed Person has admitted in writing that it is insolvent or such Distressed Person becomes subject to a Lender-Related Distress Event.

**“Lender-Related Distress Event”** shall mean, with respect to any Lender or any other Person that directly or indirectly controls such Lender (each, a **“Distressed Person”**), a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, conservator, administrator, administrative receiver, receiver, receiver and manager, trustee or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person, or any Person that directly or indirectly controls such Distressed Person or is subject to a forced liquidation or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any governmental authority having regulatory authority over such Distressed Person to be, insolvent or bankrupt; provided that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any equity interests in any Lender or any Person that directly or indirectly controls such Lender by a governmental authority or an instrumentality thereof.

**“LIBOR”** shall have the meaning provided in the definition of Eurocurrency Rate.

**“Lien”** shall mean with respect to any asset, any mortgage, lien, pledge, hypothecation, charge, security interest, preference, priority, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the UCC (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease or a license to Intellectual Property be deemed to constitute a Lien.

**“Loan”** shall mean any Term Loan.

**“Loan Proceeds Account”** shall mean a Loan Proceeds Account with the Escrow Agent into which the proceeds of the Loans shall be deposited and retained subject to withdrawal thereof by the Borrower pursuant to a Withdrawal Notice for use in accordance with the terms hereof and, for the avoidance of doubt, the Approved Budget or return thereof to the Lenders upon the occurrence of the Maturity Date.

**“Master Agreement”** shall have the meaning provided in the definition of the term “Hedge Agreement.”

**“Material Adverse Effect”** shall mean a material adverse effect on (a) the business, assets, operations, properties, or condition (financial or otherwise) of the Parent and its Subsidiaries, taken as a whole (excluding (i) any matters publicly disclosed in writing or disclosed to the Administrative Agent and the Lenders in writing prior to the filing of the Chapter 11 Cases or the Canadian Recognition Proceeding, (ii) any matters disclosed in the schedules hereto, (iii) any matters disclosed in any first day pleadings or declarations and (iv) the filing of the Chapter 11 Cases or the Canadian Recognition Proceeding, the events and conditions related and/or leading up thereto and the effects thereof and any action required to be taken

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under the Credit Documents or under the DIP Order or the Canadian DIP Recognition Order), (b) the ability of the Credit Parties, taken as a whole, to perform any of its obligations under this Agreement or any of the other Credit Documents, (c) the Collateral (taken as a whole) or the Collateral Agent's Liens (on behalf of itself and the other Secured Parties) (taken as a whole) or (d) the rights of, benefits available to, or remedies of the Agents, the Escrow Agent or the Lenders under any of the Credit Documents.

**"Maturity Date"** shall mean the earliest to occur of (a) the date that is three months after the Petition Date; provided that by written consent, Required Lenders may extend such maturity date to that date that is four months after the Petition Date, (b) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, (c) the effective date of a Chapter 11 Plan for the Debtors, (d) the date of consummation of a sale of all or substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code, (e) the first Business Day on which the Interim Order or the Canadian Supplemental Order expires by its terms, unless the Final Order or the Canadian Final Order, as applicable, has been entered and become effective prior thereto, (f) conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or any Credit Party shall file a motion or other pleading seeking the conversion of the Chapter 11 Cases to Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Required Lenders (which consent may be communicated via an email from any of the Specified Lender Advisors), (g) proceedings under or pursuant to the BIA have been commenced in respect of Skillsoft Canada, Ltd. unless otherwise consented to in writing by the Required Lenders (which consent may be communicated via an email from either of the Specified Lender Advisors), (h) dismissal or termination of any of the Chapter 11 Cases or the Canadian Recognition Proceeding, unless otherwise consented to in writing by the Required Lenders (which consent may be communicated via an email from any of the Specified Lender Advisors), and (i) the Final Order or the Canadian Final Order (once entered) is vacated, terminated, rescinded, revoked, declared null and void or otherwise ceases to be in full force and effect (unless consented to by the Required Lenders) (which consent of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors).

**"Maximum Non-Debtor Investment Cap"** shall mean \$8,000,000.

**"Maximum Withdrawal Amount"** shall mean (i) from the Funding Date until the entry of the Final Order, \$30,000,000 and (ii) thereafter, all remaining amounts held in the Loan Proceeds Account; provided that the maximum amount of any requested Withdrawal shall not exceed the amount that would cause Actual Liquidity to exceed \$30,000,000.

**"Moody's"** shall mean Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

**"Mortgage"** shall mean a mortgage, deed of trust, deed to secure debt, trust deed, or other security document entered into by the owner of a Mortgaged Property and the Collateral Agent for the benefit of the Secured Parties in respect of that Mortgaged Property to secure the Obligations, in form and substance reasonably satisfactory to the Required Lenders (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors), the Collateral Agent and the Borrower, together with such terms and provisions as may be required by local laws, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

**"Mortgaged Property"** shall mean, initially, each parcel of real estate and the improvements thereto owned in fee by a Credit Party, and each other parcel of real property and improvements thereto with respect to which a Mortgage is granted pursuant to Section 9.11 and 9.14.

“**Multiemployer Plan**” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Credit Party or ERISA Affiliate makes or is obligated to make contributions, or during the five preceding calendar years, has made or been obligated to make contributions.

“**Net Cash Proceeds**” shall mean, with respect to any Prepayment Event, (i) the cash proceeds (including payments from time to time in respect of installment obligations, if applicable, but only as and when received) received by or on behalf of any Credit Party in respect of a Prepayment Event (including (x) in the case of a casualty, insurance proceeds and (y) in the case of a condemnation or similar event, condemnation awards and similar payments), as the case may be, *less* (ii) the sum of:

(a) the amount, if any, of all taxes (including in connection with any repatriation of funds) paid or reasonably estimated to be payable by any Credit Party in connection with such Prepayment Event,

(b) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to clause (a) above) (1) directly attributable to the assets that are the subject of such Prepayment Event and (2) retained by any Credit Party; provided that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such a Prepayment Event occurring on the date of such reduction,

(c) the amount of any Indebtedness (other than under or pursuant to the Pre-Petition Credit Documents or any other Indebtedness outstanding as of the Petition Date) secured by a Lien on the assets that are the subject of such Prepayment Event to the extent that the instrument creating or evidencing such Indebtedness requires that such Indebtedness be repaid upon consummation of such Prepayment Event,

(d) in the case of any Casualty Event, the amount of any proceeds that the Parent or any Subsidiary has reinvested in the business of the Parent or such Subsidiary solely in order to replace the property affected by such Casualty Event (the “**Deferred Net Cash Proceeds**”); provided that any portion of the Deferred Net Cash Proceeds that has not been so reinvested within 30 days after receipt thereof (or such longer date as the Required Lenders may agree in their sole discretion (which agreement may be communicated via email by any Specified Lender Advisor)) (the “**Reinvestment Period**”) shall (1) be deemed to be Net Cash Proceeds of a Casualty Event on the first day after the Reinvestment Period ends and (2) be applied to the repayment of Term Loans in accordance with Section 5.2(a)(i),

(e) [reserved],

(f) in the case of any Asset Sale Prepayment Event, any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition; provided that the amount of any subsequent reduction of such escrow (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such a Prepayment Event occurring on the date of such reduction solely to the extent that any Credit Party and/or any of its Subsidiaries receives cash in an amount equal to the amount of such reduction, and

(g) all reasonable and documented fees and out of pocket expenses paid by any Credit Party to third parties in connection with such Prepayment Event (for the avoidance of doubt, including, attorney’s fees, investment banking fees, survey costs, title insurance premiums, and

related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses, and brokerage, consultant, accountant, and other customary fees),

in each case only to the extent not already deducted in arriving at the amount referred to in clause (i) above.

“**Non-Bank Tax Certificate**” shall have the meaning provided in Section 5.4(e)(ii)(B)(3).

“**Non-Defaulting Lender**” shall mean and include each Lender other than a Defaulting Lender.

“**Non-U.S. Lender**” shall mean any Lender that is not a U.S. Person.

“**Notice of Borrowing**” shall have the meaning provided in Section 2.3(a).

“**Notice of Conversion**” shall have the meaning provided in Section 2.6(a).

“**Obligations**” shall mean all advances to, and debts, liabilities, obligations, covenants, and duties of, any Credit Party arising under any Credit Document or otherwise with respect to Loans, in each case, entered into with any Credit Party or any of its Subsidiaries, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Credit Party or any Affiliate thereof of any proceeding under any bankruptcy, examinership or insolvency law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Credit Parties under the Credit Documents (and any of their Subsidiaries to the extent they have obligations under the Credit Documents) include the obligation (including guarantee obligations) to pay principal, interest, charges, expenses, fees, attorney costs, indemnities, and other amounts payable by any Credit Party under any Credit Document.

“**OFAC Regulations**” shall have the meaning provided in Section 8.20(b).

“**Other Taxes**” shall mean all present or future stamp, registration, court or documentary Taxes or any other excise, intangible, mortgage recording, filing or similar Taxes arising from any payment made hereunder or under any other Credit Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, this Agreement or any other Credit Document; provided that such term shall not include (i) any Taxes that result from an assignment, grant of a participation pursuant to Section 13.6(c) or transfer or assignment to or designation of a new lending office or other office for receiving payments under any Credit Document (“**Assignment Taxes**”) to the extent such Assignment Taxes are imposed as a result of a connection between the assignor/participating Lender and/or the assignee/Participant and the taxing jurisdiction (other than a connection arising solely from any Credit Documents or any transactions contemplated thereunder), except to the extent that any such action described in this proviso is requested or required by the Borrower or (ii) Excluded Taxes.

“**Overnight Rate**” shall mean, for any day, the Federal Funds Effective Rate.

“**Parent**” shall have the meaning provided in the preamble to this Agreement.

“**Parent Entity**” shall mean any Person that is a direct or indirect parent company (which may be organized as, among other things, a partnership) of the Parent.

“**Participant**” shall have the meaning provided in Section 13.6(c)(i).

**"Participant Register"** shall have the meaning provided in Section 13.6(c)(ii).

**"Participating Member State"** shall mean any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to economic and monetary union.

**"Patriot Act"** shall have the meaning provided in Section 13.18.

**"PBGC"** shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

**"Pension Plan"** shall mean any employee benefit pension plan (as defined in Section 3(2) of ERISA, but excluding any Multiemployer Plan) in respect of which any Credit Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

**"Permitted Holders"** shall mean each of the Initial Investors and their respective Affiliates (other than any operating portfolio company of an Initial Investor) and members of management of the Parent (or its direct or indirect parent) who are holders of Equity Interests of the Parent (or its direct or indirect parent company) on the Closing Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that, in the case of such group and without giving effect to the existence of such group or any other group, such Initial Investors, their respective Affiliates (other than any portfolio company of an Initial Investor) and such members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the total outstanding Equity Interests of the Parent or any other direct or indirect parent company of the Parent.

**"Permitted Investments"** shall mean:

(i) any Investment set forth in the Approved Budget or otherwise expressly consented to by the Required Lenders (which consent may be communicated via email by any Specified Lender Advisor); provided that any loans or advances to non-Debtor Subsidiaries shall not exceed the Maximum Non-Debtor Investment Cap;

(ii) any Investment in cash, Cash Equivalents, or Investment Grade Securities at the time such Investment is made;

(iii) investments (i) by any Credit Party in their respective Subsidiaries that are Credit Parties and (ii) by any Subsidiary of the Parent that is not a Credit Party in any of its Subsidiaries that is not a Credit Party;

(iv) loans or advances made (i) by any Credit Party to another Credit Party or (ii) made by any Subsidiary that is not a Credit Party to a Credit Party or any other Subsidiary that is not a Credit Party; provided that any such loans and advances made by a Subsidiary that is not a Credit Party to a Credit Party shall be subordinated to the Obligations on terms acceptable to the Required Lenders (which acceptance may be communicated via an email from any of the Specified Lender Advisors); provided, further, that to the extent such Subsidiary is party to the Intercompany Note such loans and advances are subordinated to the Obligations on terms acceptable to the Required Lenders;

(v) any Investment existing or contemplated on the Closing Date and, in each case, listed on Schedule 10.5;

(vi) Investments relating to any Receivables Subsidiary that, in the good faith determination of the board of directors of the Parent, are necessary or advisable to effect a Receivables Facility or any repurchases in connection therewith; provided that to the extent any Investments are made pursuant to this clause (vi), the amount of such Investments, together with the cumulative amount of all Investments made pursuant to this clause (vi), will be included in the report delivered pursuant to Section 9.18(c) that immediately follows the making of each such Investment;

(vii) investments necessary to effectuate the transactions contemplated by the RSA;

(viii) [reserved];

(ix) Investments consisting of extensions of trade credit in the ordinary course of business set forth in the Approved Budget or otherwise expressly consented to by the Required Lenders (which consent may be communicated via email by any Specified Lender Advisor);

(x) any Investment in an aggregate amount not to exceed \$2,000,000; and

(xi) investments constituting deposits described in clause (i) of the definition of the term "Permitted Liens".

"Permitted Liens" shall mean, with respect to any Person:

(i) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws, or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness), or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent or deposits made to secure obligations arising from contractual or warranty refunds, in each case incurred in the ordinary course of business;

(ii) Liens imposed by a Requirement of Law, such as carriers', warehousemen's, materialmen's, repairmen's, builders' and mechanics' Liens, arising in the ordinary course of business, in each case for sums not yet overdue for a period of more than 60 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(iii) Liens imposed by a Requirement of Law for taxes, assessments, or other governmental charges not yet overdue for a period of more than 60 days or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP or for property taxes on property that the Borrower or one of its Subsidiaries, has determined in its good faith to abandon as no longer economically practical in its business or commercially desirable to maintain if the sole recourse for such tax assessment, charge, levy, or claim is to such property or are not required to be paid pursuant to Section 8.11 or the nonpayment of which is permitted or required under the Bankruptcy Code or Canadian Bankruptcy and Insolvency Law;

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- (iv) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal, or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptances issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business;
- (v) deposits securing obligations arising after the Petition Date required under or imposed by the Bankruptcy Code;
- (vi) Liens securing Indebtedness permitted to be outstanding pursuant to clauses (a) or (b), (f) or (g) of Section 10.1;
- (vii) Liens set forth on Schedule 10.2;
- (viii) the Carve Out, the CCAA Administration Charge and the CCAA DIP Lenders' Charge;
- (ix) Liens securing cash management services in the ordinary course of business and consistent with past practices;
- (x) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;
- (xi) leases, subleases, licenses, or sublicenses (including of Intellectual Property) granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Parent or any Subsidiary, are consistent with past practices and do not secure any Indebtedness to the extent in existence on the Closing Date or approved by the Required Lenders prior to the existence of such lease, sublease, license or sublicense (which approval may be communicated via email by any Specified Lender Advisor);
- (xii) Liens in favor of the Parent, the Borrower, or any other Guarantor;
- (xiii) Liens on accounts receivable and related assets incurred in connection with a Receivables Facility;
- (xiv) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business and in accordance with the Approved Budget;
- (xv) non-exclusive licenses of Intellectual Property granted in the ordinary course of business and in existence on the Closing Date;
- (xvi) Liens securing judgments for the payment of money not constituting an Event of Default under Section 11.1(f) or Section 11.1(k);
- (xvii) Liens in favor of customs and revenue authorities arising by any Requirement of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xviii) Liens, in accordance with the Interim Order or Final Order, as applicable, (a) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (b) [reserved], and (c) in favor of banking or other financial institutions or other electronic payment service providers arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(xix) Liens granted by the Interim Order or Final Order, as applicable, and created pursuant to the Credit Documents to secure the Obligations;

(xx) Liens permitted under the Cash Management Order;

(xxi) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by any Requirement of Law; and

(xxii) other Liens securing obligations which do not exceed \$100,000.

For purposes of this definition, the term Indebtedness shall be deemed to include interest on such Indebtedness.

**“Permitted Variance”** shall mean, commencing with the applicable Permitted Variance Commencement Date, (a) in respect of Actual Operating Disbursement Amounts, 15% for each Variance Testing Period and (b) in respect of Actual Cash Receipts, 15% for each Variance Testing Period.

**“Permitted Variance Commencement Date”** shall mean (i) with respect to Actual Operating Disbursement Amounts, the third full calendar week following the Petition Date and (ii) with respect to Actual Cash Receipts, the third full calendar week following the Petition Date.

**“Person”** shall mean any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust, or other enterprise or any Governmental Authority.

**“Petition Date”** shall have the meaning assigned to such term in the recitals of this Agreement.

**“Plan”** shall mean, other than any Multiemployer Plan, any employee benefit plan (as defined in Section 3(3) of ERISA), including any employee welfare benefit plan (as defined in Section 3(1) of ERISA), any employee pension benefit plan (as defined in Section 3(2) of ERISA), and any plan which is both an employee welfare benefit plan and an employee pension benefit plan, and in respect of which any Credit Party or any ERISA Affiliate is (or, if such Plan were terminated, would under Section 4062 or Section 4069 of ERISA be reasonably likely to be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

**“Platform”** shall have the meaning provided in Section 13.17(a).

**“PPSA”** shall mean the Personal Property Security Act (New Brunswick), as amended from time to time, together with all regulations made thereunder; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by (i) a Personal Property Security Act as in effect in a Canadian jurisdiction other than New Brunswick or Quebec, or (ii) the Civil Code of Quebec, then “PPSA” shall mean the Personal Property Security Act as in effect from time to time in such other jurisdiction or the Civil Code of Quebec, as applicable.

**“Pre-Petition”** shall mean the time period ending immediately prior to the filing of the Chapter 11 Cases.

**“Pre-Petition Agent”** shall have the meaning assigned to such term in the recitals of this Agreement.

**“Pre-Petition Collateral”** shall mean collectively, the “Collateral” as defined in the Pre-Petition First Lien Credit Agreement and the “Collateral” as defined in the Pre-Petition Second Lien Credit Agreement.

**“Pre-Petition Credit Agreements”** shall have the meaning assigned to such term in the recitals of this Agreement.

**“Pre-Petition Credit Documents”** shall mean collectively, the “Credit Documents” as defined in the Pre-Petition First Lien Credit Agreements and the “Credit Documents” as defined in the Pre-Petition Second Lien Credit Agreements.

**“Pre-Petition First Lien Agent”** shall have the meaning assigned to such term in the recitals of this Agreement.

**“Pre-Petition First Lien Credit Agreement”** shall have the meaning assigned to such term in the recitals to this Agreement.

**“Pre-Petition Indebtedness”** has the meaning assigned to such term in Section 10.5(c).

**“Pre-Petition Lenders”** shall have the meaning assigned to such term in the recitals to this Agreement.

**“Pre-Petition Obligations”** shall mean collectively, the “Obligations” as defined in the Pre-Petition First Lien Credit Agreement and the “Obligations” as defined in the Pre-Petition Second Lien Credit Agreement.

**“Pre-Petition Second Lien Agent”** shall have the meaning assigned to such term in the recitals of this Agreement.

**“Pre-Petition Second Lien Credit Agreement”** shall have the meaning assigned to such term in the recitals to this Agreement.

**“Prepack Scheduling Motion”** shall mean a motion filed by the Borrower with the Bankruptcy Court seeking entry of an order of the Bankruptcy Court scheduling a combined hearing with respect to the confirmation of the Chapter 11 Plan and the approval of the Chapter 11 Plan Disclosure Statement, in form and substance reasonably satisfactory to Required Lenders (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors).

**“Prepack Scheduling Order”** shall mean an order by the Bankruptcy Court granting the Prepack Scheduling Motion, in form and substance reasonably satisfactory to the Required Lenders (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors).

**“Prepayment Event”** shall mean any Asset Sale Prepayment Event, Debt Incurrence Prepayment Event or Casualty Event.

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**“Prohibited Transaction”** shall have the meaning assigned to such term in Section 406 of ERISA and Section 4975(c) of the Code.

**“Qualified PECs”** of any Person shall mean the yield bearing preferred equity certificates, yield free preferred equity certificates or other preferred equity certificates issued by any Credit Party (other than the Parent) to the Parent prior to the Closing Date and any other substantially similar preferred equity certificates.

**“Qualified Stock”** of any Person shall mean Capital Stock of such Person other than Disqualified Stock of such Person; provided that Qualified PECs shall constitute Qualified Stock.

**“Real Estate”** shall have the meaning provided in Section 9.1(e).

**“Receivables Facility”** shall mean the Credit Agreement (and related transaction documents) dated as of December 20, 2018 among Skillsoft Receivables Financing LLC, as borrower, the lenders from time to time party thereto and CIT Bank, N.A., as administrative agent and collateral agent, as such facility may be amended, restated, supplement or otherwise modified as of the Petition Date and as may be further amended, restated, supplemented or otherwise modified from time to time in a manner reasonably acceptable to the Required Lenders (which approval may be communicated via email by any Specified Lender Advisor).

**“Receivables Subsidiary”** shall mean any Subsidiary formed for the purpose of facilitating or entering into one or more Receivables Facilities, and in each case engages only in activities reasonably related or incidental thereto or another Person formed for the purposes of engaging in a Receivables Facility in which a Credit Party or any of its Subsidiary makes an Investment and to which a Credit Party or any of its Subsidiary transfers accounts receivables and related assets. On the Closing Date, Skillsoft Receivables Financing LLC is the only Receivables Subsidiary.

**“Register”** shall have the meaning provided in Section 13.6(b)(iv).

**“Regulation T”** shall mean Regulation T of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

**“Regulation U”** shall mean Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

**“Regulation X”** shall mean Regulation X of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

**“Reinvestment Period”** shall have the meaning provided such term in the definition of Net Cash Proceeds.

**“Related Fund”** shall mean, with respect to any Lender that is a Fund, any other Fund that is advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of such entity that administers, advises or manages such Lender.

**“Related Parties”** shall mean, with respect to any specified Person, such Person’s Affiliates and the directors, officers, employees, agents, trustees, and advisors of such Person and any Person that possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

**“Release”** shall mean any release, spill, emission, discharge, disposal, escaping, leaking, pumping, pouring, dumping, emptying, injection, or leaching into the environment.

**“Remedies Notice Period”** shall have the meaning assigned to such term in the DIP Order.

**“Reorganization”** shall mean, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

**“Reportable Event”** shall mean any “reportable event”, as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Pension Plan (other than a Pension Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code), other than those events as to which notice is waived pursuant to DOL Reg. § 4043.

**“Required Lenders”** shall mean, at any date, Non-Defaulting Lenders having or holding 50.1% of the sum of (a) the Total Term Loan Commitment less the Term Loan Commitments of all Defaulting Lenders at such date and (b) the outstanding principal amount of the Term Loans (excluding Term Loans held by Defaulting Lenders) at such date; provided that Term Loan Commitments held by Affiliated Institutional Lenders shall not constitute more than 49.9% of the Term Loan Commitments in any calculation of the Required Lenders for the purpose of waivers or amendments under this Agreement.

**“Required Milestones”** shall mean the “Milestones” set forth in Section 9.21 of this Agreement and any “Milestones”, or such similar term, as defined in the DIP Order or the RSA, as applicable.

**“Requirement of Law”** shall mean, as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule, or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

**“Resignation Effective Date”** shall have the meaning provided in Section 12.9(a).

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Restricted Investment”** shall mean an Investment other than a Permitted Investment.

**“Restricted Payment”** shall have the meaning provided in Section 10.5.

**“RSA”** shall mean the Restructuring Support Agreement dated as of June 12, 2020.

**“RSA Termination Event”** shall mean an event described under Section 5 of the RSA which with the passage of time or the taking of action thereunder would result in the termination of the RSA.

**“S&P”** shall mean Standard & Poor’s Ratings Services or any successor by merger or consolidation to its business.

**“Sale Leaseback”** shall mean any arrangement with any Person providing for the leasing by the Parent or any Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by any Credit Party or any of its Subsidiaries to such Person in contemplation of such leasing.

“**Sanction(s)**” shall mean any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“**SEC**” shall mean the Securities and Exchange Commission or any successor thereto.

“**Secured Parties**” shall mean the Administrative Agent, the Collateral Agent, the Escrow Agent and each Lender, in each case with respect to the DIP Facility and each sub-agent pursuant to Section 12 appointed by the Administrative Agent with respect to matters relating to the DIP Facility or the Collateral Agent with respect to matters relating to any Security Document.

“**Security Documents**” shall mean, collectively, the DIP Order, the Canadian DIP Recognition Order, the U.S. Pledge Agreement, the Foreign Pledge Agreements, the Irish Security Documents, the U.S. Security Agreement, the Foreign Security Agreements, the Mortgages, and each other security agreement or other instrument or document executed and delivered pursuant to Sections 9.11, 9.12 or 9.14 or pursuant to any other such Security Documents to secure the Obligations or to govern the lien priorities of the holders of Liens on the Collateral.

“**Specified Lender Advisors**” shall mean (i) Gibson, Dunn & Crutcher LLP, as legal counsel, (ii) Greenhill & Co., Inc., as financial advisor and (iii) any other financial advisor, auditor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Ad Hoc Group of Lenders and/or the Required Lenders, in each case, taken as a whole.

“**Sponsor**” shall mean any of Charterhouse and its Affiliates and funds managed or advised by Charterhouse or its Affiliates but excluding operating portfolio companies of any of the foregoing.

“**Spot Rate**” for any currency shall mean the rate determined by the Administrative Agent consistent with its policies and procedures for obtaining a spot rate for such currency with another currency.

“**SPV**” shall have the meaning provided in Section 13.6(g).

“**Stock Equivalents**” shall mean all securities convertible into or exchangeable for Capital Stock and all warrants, options, or other rights to purchase or subscribe for any Capital Stock, whether or not presently convertible, exchangeable, or exercisable.

“**Subsidiary**” of any Person shall mean and include (i) any corporation more than 50% of whose Capital Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time Capital Stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, (ii) any limited liability company, partnership, association, joint venture, or other entity of which such Person directly or indirectly through Subsidiaries has more than a 50% equity interest at the time or (iii) in the case of any Credit Party incorporated in Ireland, any subsidiary of that Credit Party within the meaning of Sections 7 and 8 of the Companies Act 2014 (as amended) of Ireland. Unless otherwise expressly provided, all references herein to a Subsidiary shall mean a Subsidiary of the Parent.

“**Successor Case**” shall mean (i) with respect to the Chapter 11 Cases, any subsequent proceedings under Chapter 7 of the Bankruptcy Code, and (ii) with respect to the Canadian Recognition Proceeding, any subsequent proceedings under Canadian Bankruptcy and Insolvency Law.

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“**Taxes**” shall mean any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings (including backup withholding), fees, or other similar charges imposed by any Governmental Authority and any interest, fines, penalties, or additions to tax with respect to the foregoing.

“**Term Loan Commitment**” shall mean, in the case of each Lender that is a Lender on the Closing Date, the amount set forth opposite such Lender’s name on Schedule 1.1(b) under the Caption “Term Loan Commitment” as such Lender’s Term Loan Commitment. The aggregate amount of the Term Loan Commitments as of the Closing Date is \$60,000,000.

“**Term Loans**” shall have the meaning set forth in the recitals.

“**Title Policy**” shall have the meaning provided in Section 9.14(c).

“**Total Credit Exposure**” shall mean, at any date, the sum, without duplication, of (i) [reserved], (ii) the Total Term Loan Commitment at such date, and (iii) without duplication of clause (ii), the aggregate outstanding principal amount of all Term Loans at such date.

“**Total Term Loan Commitment**” shall mean the sum of the Term Loan Commitments of all Lenders.

“**Transaction Expenses**” shall mean any fees, costs, or expenses incurred or paid by any Parent Entity, the Parent, the Borrower, or any of their respective Affiliates in connection with the Transactions, this Agreement, the other Credit Documents, and the transactions contemplated hereby and thereby.

“**Transactions**” shall mean, collectively, the transactions contemplated by this Agreement, the Chapter 11 Cases, the Canadian Recognition Proceeding, the consummation of any other transactions in connection with the foregoing (including the payment of the fees and expenses incurred in connection with any of the foregoing, including to fund any original issue discount or upfront fees).

“**Transferee**” shall have the meaning provided in Section 13.6(e).

“**Type**” shall mean as to any Term Loan, its nature as an ABR Loan or a Eurocurrency Loan.

“**UCC**” shall mean the Uniform Commercial Code as from time to time in effect in the State of New York; provided, however, that, in the event that, by reason of any provisions of law, any of the attachment, perfection or priority of the Collateral Agent’s and the Secured Parties’ security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

“**Unrestricted Cash on Hand**” shall mean all cash of any Subsidiary other than the Actual Cash on Hand.

“**U.S.**” and “**United States**” shall mean the United States of America.

“**U.S. Credit Parties**” shall mean the Borrower and any other U.S. Subsidiaries that are Guarantors.

“**U.S. Lender**” shall have the meaning provided in Section 5.4(e)(ii)(A).

**“U.S. Person”** shall mean any Person that is a “United States person” within the meaning of Section 7701(a)(30) of the Code.

**“U.S. Pledge Agreement”** shall mean the Debtor-in-Possession Pledge Agreement dated as of the Closing Date entered into by the U.S. Credit Parties party thereto, the other parties party thereto and the Collateral Agent for the benefit of the Secured Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

**“U.S. Security Agreement”** shall mean the Debtor-in-Possession Security Agreement dated as of the Closing Date entered into by the U.S. Credit Parties party thereto, the other parties party thereto and the Collateral Agent for the benefit of the Secured Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

**“U.S. Subsidiary”** shall mean any Subsidiary of the Parent that is organized under the laws of the United States, any state thereof, or the District of Columbia.

**“UK Financial Institution”** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Variance Testing Period”** means, as applicable, the cumulative period of four weeks ending on July 10, 2020 and every other calendar week thereafter.

**“Withdrawal”** shall mean a withdrawal from the Loan Proceeds Account made in accordance with Section 7.

**“Withdrawal Date”** shall mean the date of any Withdrawal.

**“Withdrawal Liability”** shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

**“Withdrawal Notice”** shall mean a notice substantially in the form attached hereto as Exhibit C to be delivered by the Borrower to the Escrow Agent and the Administrative Agent from time to time to request a Withdrawal from the Loan Proceeds Account, signed by a Financial Officer of the Borrower.

**“Withholding Agent”** shall mean any Credit Party, the Administrative Agent and, in the case of any U.S. federal withholding Tax, any other applicable withholding agent.

**“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

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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.

1.2 Other Interpretive Provisions. With reference to this Agreement and each other Credit Document, unless otherwise specified herein or in such other Credit Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein", "hereto", "hereof", and "hereunder" and words of similar import when used in any Credit Document shall refer to such Credit Document as a whole and not to any particular provision thereof.

(c) Section, Exhibit, and Schedule references are to the Credit Document in which such reference appears.

(d) The term "including" is by way of example and not limitation.

(e) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(f) 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".

(g) Section headings herein and in the other Credit Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Credit Document.

(h) 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.

(i) All references to "knowledge" or "awareness" of any Credit Party or any Subsidiary thereof means the actual knowledge of an Authorized Officer of such Credit Party or such Subsidiary.

1.3 Accounting Terms.

(a) Except as expressly provided herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, applied in a consistent manner. If at any time any change in GAAP would affect the computation of any financial ratio set forth in any Credit Document or any financial definition of any other provision of any Credit Document, and the Borrower or the Required Lenders shall so request, the Administrative Agent, the Required Lenders (which request may be communicated via email by any Specified Lender Advisor) and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to approval by the Required Lenders and the Borrower); provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP before such change, and Borrower shall provide to the

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Administrative Agent and the Lenders within five days after delivery of each certificate or financial report required hereunder that is affected thereby a written statement of a Financial Officer of the Borrower setting forth in reasonable detail the differences that would have resulted if such financial statements had been prepared without giving effect to such change. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Parent or any Subsidiary at "fair value", as defined therein, (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (iii) without giving effect to any valuation of Indebtedness below its full stated principal amount as a result of application of Financial Accounting Standards Board Accounting Standards Update No. 2015-03, it being agreed that such Indebtedness shall at all times be valued at the full stated principal amount thereof. Notwithstanding the foregoing, all liabilities under or in respect of any lease (whether now outstanding or at any time entered into or incurred) that, under GAAP as in effect on the Closing Date, would be accrued as rental and lease expense and would not constitute a capital lease obligation in accordance with GAAP as in effect on the Closing Date shall continue to not constitute a capital lease obligation, in each case, for purposes of the covenants set forth herein and all defined terms as used therein.

1.4 [Reserved].

1.5 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to organizational documents, agreements (including the Credit Documents), and other Contractual Requirements shall be deemed to include all subsequent amendments, restatements, amendment, and restatements, extensions, supplements, modifications, replacements, refinancings, renewals, or increases, but only to the extent that such amendments, restatements, amendment, and restatements, extensions, supplements, modifications, replacements, refinancings, renewals, or increases are permitted by any Credit Document; and (b) references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting such Requirement of Law.

1.6 [Reserved].

1.7 Rates. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission, or any other matter related to the rates in the definition of Eurocurrency Rate or with respect to any comparable or successor rate thereto.

1.8 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.9 Timing of Payment or Performance. Except as otherwise provided herein, when the payment of any obligation or the performance of any covenant, duty, or obligation is stated to be due or performance required on (or before) a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

1.10 Certifications. All certifications to be made hereunder by an officer or representative of a Credit Party shall be made by such a Person in his or her capacity solely as an officer or a representative of such Credit Party, on such Credit Party's behalf and not in such Person's individual capacity.

1.11 Compliance with Certain Sections. In the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), disposition, Restricted Payment, Affiliate transaction, Contractual Requirement, or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions then permitted pursuant to any clause or subsection of Section 9.9 or any clause or subsection of Sections 10.1, 10.2, 10.3, 10.4, 10.5 or Q then, such transaction (or portion thereof) at any time shall be allocated to one or more of such clauses or subsections within the relevant sections as determined by the Borrower in its sole discretion at such time.

1.12 [Reserved].

1.13 [Reserved].

1.14 [Reserved].

1.15 Effectuation of Transactions. All references herein to the Parent and the other Subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties of the Credit Parties contained in this Agreement and the other Credit Documents shall be deemed made, in each case, after giving effect to the Transactions to occur on the Closing Date, unless the context otherwise requires.

1.16 [Reserved].

1.17 [Reserved].

Notwithstanding anything else in the Credit Documents, any reference in any of the Credit Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Credit Documents to any Permitted Lien.

## Section 2. Amount and Terms of Credit.

2.1 Commitments. Subject to and upon the terms and conditions herein set forth and in the DIP Order and in accordance therewith, each Lender severally, and not jointly, agrees to make the Term Loans to the Borrower in an amount equal to such Lender's Commitment in a single borrowing within three Business Days of the date of the entry of the Interim Order (such date, the "**Funding Date**"). Each Lender's Commitment shall automatically be reduced by the amount of Loans funded in respect thereof on the Funding Date; provided that, notwithstanding anything herein to the contrary, all such Commitments shall terminate automatically and be reduced to zero on June [●], 2020 to the extent that the Funding Date has not occurred on or prior to such date (or such later date as agreed to by the Borrower and the Required Lenders (which agreement of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors)). Such Term Loans (i) will at the option of the Borrower be incurred and maintained as, and/or converted into, ABR Loans or Eurocurrency Loans; provided that all Term Loans made by each of the Lenders pursuant to the same Borrowing shall, unless otherwise specifically provided herein, consist entirely of Term Loans of the same Type, (ii) may be repaid or prepaid (without premium or penalty) in accordance with the provisions hereof, but once repaid or prepaid, may not be reborrowed, (iii) shall not exceed for any such Lender the Term Loan Commitment of such Lender, (iv) shall not exceed in the aggregate the Total Term Loan Commitments and (v) shall be funded into the Loan Proceeds Account



on the Funding Date in accordance with Section 2.4(d). The Term Loans shall be available in Dollars and not later than the Maturity Date, all then unpaid Term Loans shall be repaid in full in Dollars.

2.2 [Reserved].

2.3 Notice of Borrowing.

(a) The Borrower shall give the Administrative Agent at the Administrative Agent's Office prior to 12:00 noon (New York City time) at least one Business Days' prior written notice in the case of a Borrowing of Term Loans to be made on the Closing Date or three (3) Business Days in the case of a Borrowing of Term Loans to be made after the Closing Date (which notice shall be delivered electronically in .pdf or other electronic imaging format acceptable to the Administrative Agent). Such notice (a "Notice of Borrowing") shall specify (i) the aggregate principal amount of the Term Loans to be made, (ii) the date of the Borrowing, and (iii) whether the Term Loans shall consist of ABR Loans and/or Eurocurrency Loans and, if the Term Loans are to include Eurocurrency Loans, the Interest Period to be initially applicable thereto (which shall be one month). If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be a Eurocurrency Borrowing. If no Interest Period with respect to any Borrowing of Eurocurrency Loans is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.3(a) (and the contents thereof), and of each Lender's pro rata share of the requested Borrowing.

2.4 Disbursement of Funds.

(a) No later than 1:00 p.m. (New York City time) on the Funding Date, each Lender shall make available its pro rata portion, if any, of the Borrowing requested to be made on such date in the manner provided below; provided that on the Funding Date, such funds may be made available at such earlier time as may be agreed among the Lenders, the Borrower, and the Administrative Agent for the purpose of consummating the Transactions.

(b) Each Lender shall make available all amounts it is to fund to the Borrower under any Borrowing for its applicable Commitments, and in immediately available funds, to the Administrative Agent at the Administrative Agent's Office and the Administrative Agent will deposit the aggregate amounts so made available into the Loan Proceeds Account in Dollars in accordance with Section 2.4(d). Unless the Administrative Agent shall have been notified by any Lender prior to the date of any such Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing or Borrowings to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing, and the Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made available such amount to the Borrower, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent in the applicable currency. The Administrative Agent shall also be entitled to recover from such Lender or any Borrower interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if paid by such Lender, the Overnight Rate or (ii) if paid by the Borrower, the then-applicable rate of interest or fees, calculated in accordance with Section 2.8, for the respective Loans.

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(c) Nothing in this Section 2.4 shall be deemed to relieve any Lender from its obligation to, fulfill its commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to fulfill its commitments hereunder).

(d) Upon receipt of all requested funds pursuant to Section 2.4(b), the Administrative Agent will promptly (i) in accordance with the Flow of Funds Statement, (I) remit to the Borrower from such amounts, all fees and expenses of counsel of the Agents, the Escrow Agent and the Specified Lender Advisors (which the Borrower shall immediately remit by wire transfer such amounts to such counsel and advisors in accordance with the Flow of Funds Statement) and (II) deduct and apply all fees payable to the Agents and the Escrow Agent on the Funding Date in accordance with the Flow of Funds Statement (including for purposes of clause (I) and (II) above in connection with any fronting arrangement), (ii) in accordance with the Flow of Funds Statement, and subject to Sections 6 and Section 7, remit to the Borrower from such amounts the amount requested by the Borrower in the Withdrawal Notice, and (iii) remit the remaining amounts by promptly crediting such amount, in like funds, to the Loan Proceeds Account. The Loans shall be deemed made by the Lenders when so remitted and applied and so deposited to such account. For the avoidance of doubt, the full amount of all Loans will begin to accrue interest on the Funding Date.

(e) For the avoidance of doubt, the Administrative Agent shall have no Commitments to make Loans in its capacity as the Administrative Agent and the Administrative Agent's requirement to remit the Loan proceeds received from the Lenders in accordance with the provisions hereof shall be limited to the funds that it receives from the Lenders.

#### 2.5 Repayment of Loans; Evidence of Debt.

(a) The Borrower shall repay to the Administrative Agent, for the benefit of the applicable Lenders, on the Maturity Date, the then outstanding Term Loans in Dollars.

(b) [Reserved].

(c) [Reserved].

(d) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to the appropriate lending office of such Lender resulting from each Loan made by such lending office of such Lender from time to time, including the amounts of principal and interest payable and paid to such lending office of such Lender from time to time under this Agreement.

(e) The Administrative Agent shall maintain the Register pursuant to Section 13.6(a), and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (i) the amount of each Loan made hereunder, whether such Loan is a Term Loan, the Type of each Loan made, the currency in which it is made, the name of the Borrower and the Interest Period, if any, applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(f) The entries made in the Register and accounts and subaccounts maintained pursuant to clauses (d) and (e) of this Section 2.5 shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that in the event of any inconsistency between the Register and any such account or subaccount, the Register shall govern, provided, further, that the failure of any Lender or the Administrative Agent to maintain such account, such Register or subaccount, as applicable, or any error therein, shall not in any

manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to such Borrower by such Lender in accordance with the terms of this Agreement.

(g) The Borrower hereby agrees that, upon request of any Lender at any time and from time to time after the Closing Date, the Borrower shall provide to such Lender, at the Borrower's own expense, a promissory note, substantially in the form of Exhibit G, as applicable, for the sole purpose of evidencing the Loans owing to such Lender. Thereafter, unless otherwise agreed to by the applicable Lender, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 13.6) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

## 2.6 Conversions and Continuations.

(a) Subject to the penultimate sentence of this clause (a), (x) the Borrower shall have the option on any Business Day to convert all or a portion equal to at least \$5,000,000 (or the Dollar Equivalent thereof) of the outstanding principal amount of Term Loans of one Type into a Borrowing or Borrowings of another Type and (y) the Borrower shall have the option on any Business Day to continue the outstanding principal amount of any Eurocurrency Loans as Eurocurrency Loans for an additional Interest Period; provided that (i) no partial conversion of Eurocurrency Loans shall be permitted, (ii) ABR Loans may not be converted into Eurocurrency Loans if an Event of Default is in existence on the date of the conversion and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such conversion, (iii) Eurocurrency Loans may not be continued as Eurocurrency Loans for an additional Interest Period if an Event of Default is in existence on the date of the proposed continuation and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such continuation, and (iv) Borrowings resulting from conversions pursuant to this Section 2.6 shall be limited in number as provided in Section 2.2. Each such conversion shall be effected by the Borrower by giving the Administrative Agent notice at the Administrative Agent's Office prior to 12:00 noon (New York City time) at least (i) three Business Days prior, in the case of a conversion to Eurocurrency Loans (other than in the case of a notice delivered on the Funding Date, which shall be deemed to be effective on the Funding Date), or (ii) three Business Days prior in the case of a conversion into ABR Loans (each such notice, a "Notice of Conversion" substantially in the form of Exhibit K) specifying the Loans to be so converted, the Type of Loans to be converted into and, if such Loans are to be converted into a Eurocurrency Loans, the Interest Period to be initially applicable thereto will be one month's duration. The Administrative Agent shall give each applicable Lender notice as promptly as practicable of any such proposed conversion or continuation affecting any of its Loans. Until the Maturity Date, any Eurocurrency Loans will be continued as Eurocurrency Loans with an Interest Period of one month's duration.

(b) If any Event of Default is in existence at the time of any proposed continuation of any Eurocurrency Loans denominated in Dollars and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such continuation, such Eurocurrency Loans shall be automatically converted on the last day of the current Interest Period into ABR Loans. If upon the expiration of any Interest Period in respect of Eurocurrency Loans, the Borrower has failed to elect a new Interest Period to be applicable thereto as provided in clause (a), the Borrower shall be deemed to have elected to convert such Borrowing of Eurocurrency Loans into a Borrowing of ABR Loans, effective as of the expiration date of such current Interest Period.

2.7 Pro Rata Borrowings. Each Borrowing of Term Loans under this Agreement shall be made by the Lenders pro rata on the basis of their then-applicable Term Loan Commitments. It is understood that (a) no Lender shall be responsible for any default by any other Lender in its obligation to make Loans hereunder and that each Lender severally but not jointly shall be obligated to make the Loans provided to

be made by it hereunder, regardless of the failure of any other Lender to fulfill its commitments hereunder and (b) other than as expressly provided herein with respect to a Defaulting Lender, failure by a Lender to perform any of its obligations under any of the Credit Documents shall not release any Person from performance of its obligation, under any Credit Document.

2.8 Interest.

(a) The unpaid principal amount of each ABR Loan shall bear interest from the date of the Borrowing thereof until maturity (whether by acceleration or otherwise) at a rate per annum that shall at all times be the Applicable Margin for ABR Loans *plus* the ABR, in each case, in effect from time to time.

(b) The unpaid principal amount of each Eurocurrency Loan shall bear interest from the date of the Borrowing thereof until maturity thereof (whether by acceleration or otherwise) at a rate per annum that shall at all times be the Applicable Margin for Eurocurrency Loans *plus* the relevant Eurocurrency Rate.

(c) Notwithstanding the foregoing, unless otherwise elected by the Required Lenders (which election not to impose the default interest rate set forth in this Section 2.8(c) may be communicated via an email from any of the Specified Lender Advisors), upon the occurrence and during the continuation of an Event of Default, Loans and all other Obligations overdue hereunder shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable thereto.

(d) Interest on each Loan shall accrue from and including the date of any Borrowing to but excluding the date of any repayment thereof and shall be payable in the same currency in which the Loan is denominated; provided that any Loan that is repaid on the same date on which it is made shall bear interest for one day. Except as provided below, interest shall be payable (i) in respect of each ABR Loan, monthly in arrears on the last Business Day of each month of the Borrower, (ii) in respect of each Eurocurrency Loan, on the last day of each Interest Period applicable thereto, and (iii) in respect of each Loan, (A) on any prepayment in respect thereof, (B) at maturity (whether by acceleration or otherwise), and (C) after such maturity, on demand.

(e) All computations of interest hereunder shall be made in accordance with Section 5.5.

(f) The Administrative Agent, upon determining the interest rate for any Borrowing of Eurocurrency Loans, shall promptly notify the Borrower and the relevant Lenders thereof. Each such determination shall, absent clearly demonstrable error, be final and conclusive and binding on all parties hereto.

2.9 Interest Periods. At the time the Borrower gives a Notice of Borrowing or Notice of Conversion in respect of the making of, or conversion into or continuation as, a Borrowing of Eurocurrency Loans in accordance with Section 2.6(a), the Borrower shall give the Administrative Agent written notice of the Interest Period applicable to such Borrowing, which Interest Period shall be a one month period.

Notwithstanding anything to the contrary contained above:

(a) the initial Interest Period for any Borrowing of Eurocurrency Loans shall commence on the date of such Borrowing (including the date of any conversion from a Borrowing of ABR Loans) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires;

(b) if any Interest Period relating to a Borrowing of Eurocurrency Loans begins on the last Business Day of a calendar month or begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period in respect of a Eurocurrency Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day; and

(d) the Borrower shall not be entitled to elect any Interest Period in respect of any Eurocurrency Loan if such Interest Period would extend beyond the Maturity Date of such Loan.

2.10 Increased Costs, Illegality, Etc.

(a) In the event that (x) in the case of clause (i) below, the Administrative Agent or the Required Lenders and (y) in the case of clauses (ii) and (iii) below, the Required Lenders shall have reasonably determined (which determination shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the Eurocurrency Rate for any Interest Period that (x) deposits in the principal amounts and currencies of the Loans comprising such Eurocurrency Loan are not generally available in the relevant market or (y) by reason of any changes arising on or after the Closing Date affecting the applicable interbank market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of Eurocurrency Rate; or

(ii) at any time, that such Lenders shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any Eurocurrency Loans (including any increased costs or reductions attributable to Taxes, other than any increase or reduction attributable to Indemnified Taxes or Other Taxes) because of any Change in Law; or

(iii) at any time, that the making or continuance of any Eurocurrency Loan has become unlawful by compliance by such Lenders in good faith with any law, governmental rule, regulation, guideline or order (or would conflict with any such governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or has become impracticable as a result of a contingency occurring after the Closing Date that materially and adversely affects the applicable interbank market;

(such Loans, "Impacted Loans"), then, and in any such event, such Required Lenders (or the Administrative Agent or the Required Lenders, as applicable, in the case of clause (i) above) shall within a reasonable time thereafter give notice (if by telephone, confirmed in writing) to the Borrower, and to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter (x) in the case of clause (i) above, Eurocurrency Loans shall no longer be available until such time as the Administrative Agent or the Required Lenders, as applicable, notifies the Borrower, the Administrative Agent (if applicable) and the Lenders that the circumstances giving rise to such notice by the Administrative Agent or the Required Lenders, as applicable, no longer exist (which notice shall be given at such time when such circumstances no longer exist), and any Notice of Borrowing or Notice of Conversion given by the Borrower with respect to Eurocurrency Loans that have not yet been incurred shall be deemed rescinded by the Borrower, (y) in the

case of clause (ii) above, the Borrower shall pay to such Lenders, promptly after receipt of written demand therefor such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Required Lenders, in their reasonable discretion shall determine) as shall be required to compensate such Lenders for such actual increased costs or reductions in amounts receivable hereunder (it being agreed that a written notice as to the additional amounts owed to such Lenders, showing in reasonable detail the basis for the calculation thereof, submitted to the Borrower by such Lenders shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto), and (z) in the case of subclause (iii) above, the Borrower shall take one of the actions specified in subclause (x) or (y), as applicable, of Section 2.10(b) promptly and, in any event, within the time period required by law.

Notwithstanding the foregoing, if the Administrative Agent or the Required Lenders, as applicable, has made the determination described in Section 2.10(a)(i)(x), the Required Lenders, in consultation with the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent or the Required Lenders, as applicable, revokes the notice delivered with respect to the Impacted Loans under clause (x) of the first sentence of the immediately preceding paragraph, (2) the Required Lenders or the affected Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(b) At any time that any Eurocurrency Loan is affected by the circumstances described in Section 2.10(a)(ii) or (iii), the Borrower may (and in the case of a Eurocurrency Loan affected pursuant to Section 2.10(a)(iii) shall) either (x) if a Notice of Borrowing or Notice of Conversion with respect to the affected Eurocurrency Loan has been submitted pursuant to Section 2.3 but the affected Eurocurrency Loan has not been funded or continued, cancel such requested Borrowing by giving the Administrative Agent written notice thereof on the same date that the Borrower was notified by Lenders pursuant to Section 2.10(a)(ii) or (iii) or (y) if the affected Eurocurrency Loan is then outstanding, upon at least three Business Days' notice to the Administrative Agent, require the affected Lender to convert each such Eurocurrency Loan into an ABR Loan; provided that if more than one Lender is affected at any time, then all affected Lenders must be treated in the same manner pursuant to this Section 2.10(b).

(c) If, after the Closing Date, any Change in Law relating to capital adequacy or liquidity of any Lender or compliance by any Lender or its parent with any Change in Law relating to capital adequacy or liquidity occurring after the Closing Date, has or would have the effect of reducing the actual rate of return on such Lender's or its parent's or its Affiliate's capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent or its Affiliate could have achieved but for such Change in Law (taking into consideration such Lender's or its parent's policies with respect to capital adequacy or liquidity), then from time to time, promptly after demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such actual additional amount or amounts as will compensate such Lender or its parent for such actual reduction, it being understood and agreed, however, that a Lender shall not be entitled to such compensation as a result of such Lender's compliance with, or pursuant to any request or directive to comply with, any law, rule or regulation as in effect on the Closing Date or to the extent such Lender is not imposing such charges on, or requesting such compensation from, borrowers (similarly situated to the Borrower hereunder) under comparable syndicated credit facilities similar to the DIP Facility. Each Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 2.10(c), will give prompt written

notice thereof to the Borrower, which notice shall set forth in reasonable detail the basis of the calculation of such additional amounts, although the failure to give any such notice shall not, subject to Section 2.13, release or diminish the Borrower's obligations to pay additional amounts pursuant to this Section 2.10(c) promptly following receipt of such notice.

(d) With respect to any alternative interest rate selected by the Required Lenders pursuant to this Section 2.10: (i) no Agent or the Escrow Agent shall be bound to follow or agree to any modification to this Agreement or any other Credit Document or any such rate that would increase or materially change or affect the duties, obligations or liabilities of any Agent or the Escrow Agent (including without limitation the imposition or expansion of discretionary authority), or reduce, eliminate, limit or otherwise change any right, privilege or protection of any Agent or the Escrow Agent, or would otherwise materially and adversely affect any Agent or the Escrow Agent, in each case in its reasonable judgment, without its express written consent (such consent not to be unreasonably withheld) and (ii) any such alternative interest rate shall be administratively feasible for the Administrative Agent.

2.11 Compensation. If (a) any payment of principal of any Eurocurrency Loan is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Eurocurrency Loan as a result of a payment or conversion pursuant to Sections 2.5, 2.6, 2.10, 5.1, 5.2, or 13.7, as a result of acceleration of the maturity of the Loans pursuant to Section 11 or for any other reason, (b) any Borrowing of Eurocurrency Loans is not made as a result of a withdrawn Notice of Borrowing or a failure to satisfy borrowing conditions, (c) any ABR Loan is not converted into a Eurocurrency Loan as a result of a withdrawn Notice of Conversion, (d) any Eurocurrency Loan is not continued as a Eurocurrency Loan, as the case may be, as a result of a withdrawn Notice of Conversion or (e) any prepayment of principal of any Eurocurrency Loan is not made as a result of a withdrawn notice of prepayment pursuant to Sections 5.1 or 5.2, the Borrower shall, after receipt of a written request by such Lender (which request shall set forth in reasonable detail the basis for requesting such amount), promptly pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that such Lender may reasonably incur as a result of such payment, failure to convert, failure to continue or failure to prepay, including any loss, cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Eurocurrency Loan. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender as specified in this Section 2.11 and setting forth in reasonable detail the manner in which such amount or amounts were determined shall be delivered to the Borrower and shall be conclusive, absent manifest error.

2.12 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Sections 2.10(a)(ii), 2.10(a)(iii), 2.10(b) or 5.4 with respect to such Lender, it will, if requested by the Borrower use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event; provided that such designation is made on such terms that such Lender and its lending office suffer no unreimbursed cost or other material economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of any such Section. Nothing in this Section 2.12 shall affect or postpone any of the obligations of the Borrower or the right of any Lender provided in Sections 2.10 or 5.4.

2.13 Notice of Certain Costs. Notwithstanding anything in this Agreement to the contrary, to the extent any notice required by Sections 2.10 or 2.11 is given by any Lender more than 180 days after such Lender has knowledge (or should have had knowledge) of the occurrence of the event giving rise to the additional cost, reduction in amounts, loss, or other additional amounts described in such Sections, such Lender shall not be entitled to compensation under Sections 2.10 or 2.11, as the case may be, for any such amounts incurred or accruing prior to the 181st day prior to the giving of notice to the Borrower; provided

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that, if the circumstances giving rise to such claim is retroactive, then such 180 day period referred to above shall be extended to include the period of retroactive effect thereof.

2.14 [Reserved].

2.15 [Reserved]

2.16 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 Requirement of Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 13.1.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 11 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.9 shall be applied at such time or times as follows: *first*, as may be determined by the Administrative Agent to the payment of any amounts owing by such Defaulting Lender to any Agent or the Escrow Agent hereunder; *second*, [reserved]; *third*, [reserved]; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) [reserved]; *sixth*, to the payment of any amounts owing to the Borrower, the Lenders as a result of any judgment of a court of competent jurisdiction obtained by the Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share. 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 pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 4 for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure. If the Borrower notifies the Administrative Agent in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other

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Lenders or take such other actions as may be necessary to cause the Term Loans to be held on a pro rata basis by the Lenders in accordance with their percentages of the Term Loan Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 3. [Reserved]

Section 4. Fees

4.1 Fees.

(a) The Borrower agrees to pay to the Administrative Agent in Dollars, for the account of each Lender (in each case pro rata according to the respective Commitments of all such Lenders), a commitment fee (the "Commitment Fee") on the Funding Date equal to 3.00% of the aggregate principal amount of the Term Loans.

(b) The Borrower agrees to pay (i) to the Agents and the Lenders, as applicable, for their respective accounts, the fees and other amounts due in accordance with the terms of the Fee Letter in accordance with the applicable terms thereof and (ii) to the Escrow Agent the fees set forth in the fee letter referenced in the Escrow Agreement.

(c) Notwithstanding the foregoing, the Borrower shall not be obligated to pay any amounts to any Defaulting Lender pursuant to this Section 4.1, except as otherwise set forth in Section 2.16(a)(iii)(B).

Section 5. Payments

5.1 Voluntary Prepayments.

(a) The Borrower shall have the right to prepay Term Loans, in each case, without premium or penalty, in whole or in part from time to time on the following terms and conditions: (1) the Borrower shall give the Administrative Agent at the Administrative Agent's Office written notice of the Borrower's intent to make such prepayment, the amount of such prepayment and (in the case of Eurocurrency Loans) the specific Borrowing(s) pursuant to which made, which notice shall be given by the Borrower no later than 12:00 Noon (New York City time) (i) in the case of Eurocurrency Loans, three Business Days prior to the date of such prepayment, (ii) [reserved], (iii) in the case of ABR Loans, two Business Days prior to the date of such prepayment or (iv) [reserved], (2) each partial prepayment of (i) any Borrowing of Eurocurrency Loans shall be in a minimum amount of \$5,000,000 (or the Dollar Equivalent thereof) and in multiples of \$1,000,000 (or the Dollar Equivalent thereof) in excess thereof, (ii) any ABR Loans shall be in a minimum amount of \$1,000,000 and in multiples of \$500,000 in excess thereof, and (iii) [reserved]; and (3) in the case of any prepayment of Eurocurrency Loans pursuant to this Section 5.1 on any day other than the last day of an Interest Period applicable thereto, the Borrower shall, promptly after receipt of a written request by any applicable Lender (which request shall set forth in reasonable detail the basis for requesting such amount), pay to the Administrative Agent for the account of such Lender any amounts required pursuant to Section 2.11.

5.2 Mandatory Prepayments.

(a) Term Loan Prepayments. Subject in all respects to the DIP Order, on each occasion that a

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Prepayment Event occurs, the Borrower shall, within two Business Days after receipt of the Net Cash Proceeds of any Prepayment Event (or, in the case of Deferred Net Cash Proceeds, within two Business Days after the Reinvestment Period ends), prepay, in accordance with clause (c) below, Term Loans with an equivalent principal amount equal to 100% of the Net Cash Proceeds from such Prepayment Event, unless otherwise approved by the Required Lenders (which approval may be communicated via an email from any of the Specified Lender Advisors). No prepayment pursuant to this Section 5.2(a) shall be required in respect of the sale or disposition of any Foreign Subsidiary's assets to the extent such prepayment would result in material adverse tax consequences (as reasonably determined by the Borrower in consultation with the Administrative Agent) or would be prohibited or restricted by applicable law.

(b) Reinvestment Period. Until the Reinvestment Period ends, the Parent or any Subsidiary shall apply the Net Cash Proceeds from such Casualty Event solely to reinvest in the business of the Parent or such Subsidiary in order to replace the property affected by such Casualty Event; provided that the Parent and the Subsidiaries will be deemed to have complied with this Section 5.2(b) if and to the extent that, within the Reinvestment Period after the Casualty Event that generated the Net Cash Proceeds, the Parent or such Subsidiary has reinvested such proceeds within the Reinvestment Period and, in the event any such proceeds are not reinvested within the Reinvestment Period, the Parent or such Subsidiary prepays the Loans in accordance with Section 5.2(a).

(c) Application to Repayment Amounts. Each prepayment required by Section 5.2(a) shall be allocated pro rata among the Loans based on the amounts due thereunder. With respect to each such prepayment, the Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to Section 5.2(a) two Business Days after the date of realization or receipt of such Net Cash Proceeds. Each such notice shall be irrevocable, shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment, shall be substantially in the form of Exhibit D and which shall include a calculation of the amount of such prepayment to be applied to the Term Loans requesting that the Administrative Agent provide notice of such prepayment to each Lender.

### 5.3 Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments under this Agreement shall be made by the Borrower, without set-off, counterclaim or deduction of any kind, to the Administrative Agent for the ratable account of the Lenders entitled thereto not later than 1:00 p.m. (New York City time), in each case, on the date when due and shall be made in immediately available funds at the Administrative Agent's Office or at such other office as the Administrative Agent shall specify for such purpose by notice to the Borrower, it being understood that written or facsimile notice by the Borrower to the Administrative Agent to make a payment from the funds in the Borrower's account at the Administrative Agent's Office shall constitute the making of such payment to the extent of such funds held in such account. All repayments or prepayments of any Loans (whether of principal, interest or otherwise) hereunder shall be made in the currency in which such Loans are denominated and all other payments under each Credit Document shall, unless otherwise specified in such Credit Document, be made in Dollars. The Administrative Agent will thereafter cause to be distributed on the same day (if payment was actually received by the Administrative Agent prior to 2:00 p.m. (New York City time) or, otherwise, on the next Business Day in the Administrative Agent's sole discretion) like funds relating to the payment of principal or interest or Fees ratably to the Lenders entitled thereto.

(b) Any payments under this Agreement that are made later than 2:00 p.m. (New York City time) shall be deemed to have been made on the next succeeding Business Day for purposes of calculating interest thereon. Except as otherwise provided herein, whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next

succeeding Business Day and, with respect to payments of principal, interest shall be payable during such extension at the applicable rate in effect immediately prior to such extension.

(c) Pre-Default Allocation of Payments. At all times when Section 5.3(d) does not apply and except as otherwise expressly provided herein, monies to be applied to the Obligations and the Pre-Petition Obligations, whether arising from payments by the Credit Parties, realization on Collateral, setoff or otherwise, shall be allocated as follows (subject, in all respects, to the Carve Out and the CCAA Administration Charge):

(i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs and fees and expenses of the Agent Advisors payable under the Credit Documents) payable to the Agents and the Escrow Agent in their capacity as such pursuant to any Credit Document, until paid in full;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders pursuant to any Credit Document (including Attorney Costs and fees and expenses of Lender Advisors payable under Section 13.5 and amounts payable under Section 2.10 or 5.4), ratably among them in proportion to the amounts described in this clause Second payable to them, until paid in full;

(iii) *Third*, to pay interest and principal due in respect of all Loans, until paid in full;

(iv) *Fourth*, to the payment of all other Obligations of the Credit Parties that are due and payable to the Administrative Agent, the Collateral Agent or the Escrow Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent, the Collateral Agent or the Escrow Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, until paid in full;

(v) *Fifth*, ratably to pay any Obligations that are that are due and payable to Defaulting Lenders, until paid in full;

(vi) *Sixth*, to the Pre-Petition Agents for the payment of the Pre-Petition Obligations in accordance with the Pre-Petition Credit Agreements; and

(vii) *Last*, the balance, if any, to the Borrower or as otherwise required by law.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category.

(d) Post-Default Allocation of Payments. Notwithstanding anything herein to the contrary, after the occurrence and during the continuation of an Event of Default, the Required Lenders may elect, in lieu of the allocation of payments set forth in Section 5.3(a), that monies to be applied to the Obligations, whether arising from payments by the Credit Parties, realization on Collateral, setoff or otherwise, shall, to the extent elected by the Required Lenders (in writing to the Administrative Agent), be allocated as follows (subject, in all respects, to the Carve Out and the CCAA Administration Charge):

- (i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs and fees and expenses of Agent Advisors payable under the Credit Documents) payable to the Agents and the Escrow Agent pursuant to any Credit Document in their capacity as such, until paid in full;
- (ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders pursuant to any Credit Document (including Attorney Costs and fees and expenses of the Lender Advisors payable under Section 13.5 and amounts payable under Section 2.10 or 5.4), ratably among them in proportion to the amounts described in this clause Second payable to them, until paid in full;
- (iii) *Third*, to pay interest and principal due in respect of all Loans, until paid in full;
- (iv) *Fourth*, to the payment of all other Obligations of the Credit Parties that are due and payable to the Administrative Agent, the Collateral Agent or the Escrow Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, until paid in full;
- (v) *Fifth*, ratably to pay any Obligations that are that are due and payable to Defaulting Lenders, until paid in full;
- (vi) *Sixth*, to pay any other Obligations until paid in full;
- (vii) *Seventh*, to the Pre-Petition Agents for the payment of the Pre-Petition Obligations in accordance with the Pre-Petition Credit Agreements; and
- (viii) *Last*, the balance, if any, after Full Payment of the Obligations, to the Borrower or as otherwise required by any Requirement of Law.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. The allocations set forth in this Section 5.3(d) may be changed by agreement among the Agents, the Escrow Agent and the Lenders without the consent of any Credit Party and are subject to Section 2.16 (regarding Defaulting Lenders); *provided* that, notwithstanding the foregoing, no amendment to Section 5.3(d) shall be permitted without the consent of the Borrower which would modify the priority of the Pre-Petition Obligations set forth therein. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. 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 5.3(d). For the avoidance of doubt, nothing contained in this Agreement shall relieve or waive payment of the Pre-Petition Obligations in accordance with the Pre-Petition Credit Agreements.

(e) If, except as otherwise expressly provided herein (subject in all respects to the Carve Out and the CCAA Administration Charge), any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such

greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to any Credit Party or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agree, to the extent they may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower's rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(g) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder; application of amounts pursuant to (i) and (ii) above shall be made in any order determined by the Administrative Agent in its discretion.

5.4 Net Payments.

(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 hereunder or under any other Credit Document shall to the extent permitted by applicable laws be made free and clear of and without reduction or withholding for any Taxes.

(ii) If any Credit Party, the Administrative Agent or any other applicable Withholding Agent shall be required by applicable law to withhold or deduct any Taxes from any payment, then (A) such Withholding Agent shall withhold or make such deductions as are reasonably determined by such Withholding Agent to be required by applicable law, (B) such Withholding Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after such required withholding or deductions have been made (including any such withholding or deductions applicable to additional sums payable under this Section 5.4) each Lender (or, in the case of a payment to the Administrative Agent for its own account,

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the Administrative Agent) receives an amount equal to the sum it would have received had no such withholding or deductions been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of clause (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law or timely reimburse the Administrative Agent or any Lender for the payment of any Other Taxes.

(c) Tax Indemnifications. Without limiting the provisions of clause (a) or (b) above, the Borrower shall indemnify the Administrative Agent and each Lender, and shall make payment in respect thereof within 15 days after demand therefor, for the full amount of Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.4) payable by the Administrative Agent or such Lender, as the case may be, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability (along with a written statement setting forth in reasonable detail the basis and calculation of such amounts) delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority as provided in this Section 5.4, the Borrower shall deliver to the Administrative Agent and the Lenders the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders and Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Administrative Agent, at such time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not any payments made hereunder or under any other Credit Document are subject to withholding Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of any payments to be made to such Lender by any Credit Party pursuant to any Credit Document or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction. Any documentation and information required to be delivered by a Lender pursuant to this Section 5.4(e) (including any specific documentation set forth in subsection (ii) below) shall be delivered by such Lender (i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), (ii) whenever a lapse of time or change in circumstances renders such documentation obsolete, expired or inaccurate in any respect and (iii) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent. Each such Lender shall also promptly notify in writing the Borrower and the Administrative Agent if such Lender is no longer legally eligible to provide any documentation previously provided.

Notwithstanding anything to the contrary in this Section 5.4, no Lender or the Administrative Agent shall be required to deliver any documentation that it is not legally eligible to deliver.

(ii) Without limiting the generality of the foregoing:

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- (A) any Lender that is a U.S. Person (a “U.S. Lender”) shall deliver to the Borrower and the Administrative Agent executed copies of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable laws or reasonably requested by the Borrower or the Administrative Agent certifying that such Lender is exempt from U.S. federal backup withholding tax;
- (B) each Non-U.S. Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of U.S. federal withholding tax with respect to any payments hereunder or under any other Credit Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) whichever of the following is applicable:
- (1) executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor form thereto) claiming eligibility for benefits of an income tax treaty to which the United States is a party;
- (2) executed copies of Internal Revenue Service Form W-8ECI (or any successor form thereto);
- (3) in the case of a Non-U.S. 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 J-1, J-2, J-3 or J-4, as applicable, (a “Non-Bank Tax Certificate”), to the effect that such Non-U.S. Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and that no payments under any Credit Document are effectively connected with such Non-U.S. Lender’s conduct of a United States trade or business and (y) executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor thereto);
- (4) where such Lender is a partnership (for U.S. federal income tax purposes) or otherwise not a beneficial owner (e.g., where such Lender has sold a participation), Internal Revenue Service Form W-8IMY (or any successor thereto), accompanied by Internal Revenue Service Form W-8ECI, Internal Revenue service Form W-8BEN or W-8BEN-E and/or Internal Revenue Service Form W-9 (in each case, or any successor thereto), and all required supporting documentation (including, where one or more of the underlying beneficial owner(s) is claiming the benefits of the portfolio interest exemption, a Non-Bank Tax Certificate of such beneficial owner(s)) (provided that, if the Non-U.S. Lender is a partnership and not a participating Lender, the Non-Bank Tax Certificate(s) may be provided by the Non-U.S. Lender on behalf of the direct or indirect partner(s)); or
- (5) executed copies of any other form prescribed by applicable laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made;

(C) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) On or before the date the Administrative Agent (or any successor thereto) becomes a party to this Agreement, such Administrative Agent shall provide to the Borrower two duly-signed properly completed copies of the documentation prescribed in clause (A) or (B) below, as applicable (together with any required attachments): (A) IRS Form W-9 or any successor thereto, or (B)(x) IRS Form W-8ECI, or any successor thereto with respect to payments, if any, received by the Administrative Agent for its own account, and (y) with respect to payments received on account of any Lender, executed copies of IRS Form W-8IMY (or any successor form) certifying that the Administrative Agent is either (a) a "qualified intermediary" or (b) a "U.S. branch" and that payment it receives for others are not effectively connected with the conduct of a trade or business in the United States, in each case certifying that the Administrative Agent is assuming primary withholding responsibility under Chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility for payments it receives for the accounts of others, with the effect that the Borrower can make payments to the Administrative Agent without deduction or withholding of any Taxes imposed by the United States. At any time thereafter, the Administrative Agent shall update documentation previously provided (including, if applicable, any successor forms thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. The Administrative Agent shall also promptly notify the Borrower in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other 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 5.4, the Administrative Agent or such Lender (as applicable) shall promptly pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Credit Parties under this Section 5.4 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) incurred by the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. In such event, the Administrative Agent or such Lender, as the case may be,



shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority (provided that the Administrative Agent or such Lender may delete any information therein that it deems confidential). Notwithstanding anything to the contrary in this paragraph (f), in no event will the Administrative Agent or any Lender be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than the Administrative Agent or any Lender 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 the Administrative Agent or any Lender 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) If the Administrative Agent is a U.S. Person, it shall provide the Borrower with two duly completed original copies of Internal Revenue Service Form W-9. If the Administrative Agent is not a U.S. Person, it shall provide applicable Internal Revenue Service Form W-8 (together with required accompanying documentation) with respect to payments to be received by it on behalf of the Lenders.

(h) [Reserved].

(i) Each party's obligations under this Section 5.4 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under the Credit Documents.

#### 5.5 Computations of Interest and Fees.

(a) Except as provided in the next succeeding sentence, interest on Eurocurrency Loans shall be calculated on the basis of a 360-day year for the actual days elapsed. Interest on ABR Loans shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed.

(b) Fees shall be calculated on the basis of a 360-day year for the actual days elapsed.

(c) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or such other period of time, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

#### 5.6 Limit on Rate of Interest.

(a) No Payment Shall Exceed Lawful Rate. Notwithstanding any other term of this Agreement, the Borrower shall not be obliged to pay any interest or other amounts under or in connection with this Agreement or otherwise in respect of the Obligations in excess of the amount or rate permitted under or consistent with any applicable law, rule or regulation.

(b) Payment at Highest Lawful Rate. If the Borrower is not obliged to make a payment that it would otherwise be required to make, as a result of Section 5.6(a), the Borrower shall make such payment

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to the maximum extent permitted by or consistent with applicable laws, rules, and regulations (the "Maximum Rate").

(c) Adjustment if Any Payment Exceeds Lawful Rate. If any provision of this Agreement or any of the other Credit Documents would obligate the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate that would be prohibited by any applicable law, rule or regulation, then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law, such adjustment to be effected, to the extent necessary, by reducing the amount or rate of interest required to be paid by the Borrower to the affected Lender under Section 2.8; provided that to the extent lawful, the interest or other amounts that would have been payable but were not payable as a result of the operation of this Section shall be cumulated and the interest payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if any Lender shall have received from the Borrower an amount in excess of the maximum permitted by any applicable law, rule or regulation, then the Borrower shall be entitled, by notice in writing to the Administrative Agent to obtain reimbursement from that Lender in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by that Lender to the Borrower.

Without limiting the generality of the foregoing, if any provision of this Agreement would oblige any Credit Party that is organized under the laws of Canada or any Province thereof to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest; and
- (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

**5.7 Super Priority Nature of Obligations and Collateral Agent's Liens; Payment of Obligations.**

(a) The priority of the Collateral Agent's Liens on the Collateral, claims and other interests shall be as set forth in the DIP Order and the Canadian DIP Recognition Order (and, for the avoidance of doubt, are subject to the Carve Out).

(b) Upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Credit Documents, the Administrative Agent and the Lenders shall be entitled to immediate payment of such Obligations without application to or order of the Bankruptcy Court or the Canadian Bankruptcy Court.

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Section 6. Conditions Precedent.

6.1 Conditions Precedent to the Closing Date. The effectiveness of this Agreement and the obligations of each Lender to make any Loan hereunder on the Funding Date is subject to the satisfaction or waiver (by the Required Lenders in their sole discretion and, with respect to any condition affecting the rights and duties of the Administrative Agent, the Administrative Agent, any which waiver by the Required Lenders, and the satisfaction of the Required Lenders with any document described in Section 6 may be communicated via an email from any of the Specified Lender Advisors), of the following conditions precedent:

(a) Credit Documents. This Agreement and the other Credit Documents shall be satisfactory to the Required Lenders and delivered to the Administrative Agent and the Specified Lender Advisors and there shall have been delivered to the Administrative Agent and the Specified Lender Advisors a duly executed counterpart of this Agreement and each of the other Credit Documents by the applicable parties thereto (which may include telecopy transmission of a signed signature page).

(b) Orders. (i) The Bankruptcy Court shall have entered the Interim Order, no later than three (3) Business Days after the Petition Date, and such order shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion, be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent); (ii) the Administrative Agent and the Lenders shall have received drafts of the "first day" pleadings for the Chapter 11 Cases and all materials for the Canadian Recognition Proceeding, in each case, in form and substance satisfactory to the Administrative Agent and the Required Lenders, not later than a reasonable time in advance of the Petition Date for the Administrative Agent and the Required Lenders' counsel to review and analyze the same; (iii) all motions, orders (including the "first day" orders) and other documents to be filed with or submitted to the Bankruptcy Court on the Petition Date or the Canadian Bankruptcy Court on the CCAA Filing Date shall be in form and substance reasonably satisfactory to the Administrative Agent and the Lenders; and (iv) (a) all "first day" orders shall have been approved and entered by the Bankruptcy Court except as otherwise agreed by the Required Lenders.

(c) Initial Approved Budget; Cash Flow Forecast. The Administrative Agent and the Specified Lender Advisors shall have received (i) the Initial Approved Budget and (ii) the initial Cash Flow Forecast, each in form and substance acceptable to the Lenders.

(d) Compliance with RSA. The RSA shall be in full force and effect and no default by any of the Credit Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA.

(e) Closing Certificate. The Administrative Agent shall have received a certificate dated as of the Closing Date and signed by a Financial Officer of the Borrower confirming compliance with Sections 6.1(d), 6.1(h) and 6.1(k), in form and substance satisfactory to the Administrative Agent and the Required Lenders.

(f) Authorization of Proceedings of the Parent, the Borrower and the Guarantors; Corporate Documents. The Administrative Agent shall have received a certificate of each Credit Party dated as of the Closing Date, which shall contain appropriate attachments, including (i) a copy of the resolutions, minutes or written consents of the board of directors, the sole director or other managers of each Credit Party (or a duly authorized committee thereof) authorizing (a) the execution, delivery, and performance of the Credit Documents (and any agreements relating thereto) to which it is a party and (b) in the case of the Borrower,

the extensions of credit contemplated hereunder, (ii) the Certificate of Incorporation and By-Laws, Certificate of Formation and Operating Agreement, Articles of Association or other comparable organizational documents, as applicable, of each Credit Party as in effect on the Closing Date, (iii) signature, specimen signatures and/or incumbency certificates (or other comparable documents evidencing the same) of the Authorized Officers of each Credit Party executing any Credit Document to which it is a party and (iv) good standing certificates (to the extent applicable) in the respective jurisdictions of organization of each Credit Party.

(g) Fees. All Fees due and payable on or before the Closing Date, including, to the extent invoiced not less than one Business Day prior to the Closing Date, reimbursement or payment of the reasonable and documented expenses (including the premiums and recording taxes and fees and the reasonable and documented fees and expenses of the Specified Lender Advisors, as counsel to the Ad Hoc Group of Lenders, the Lender Advisors, the Agent Advisors and counsel to the Escrow Agent, and the fees and expenses of any local counsel of the Lenders, shall be paid (or will be paid from the proceeds of the Loans)), in each case, to the extent required to be reimbursed or paid by the Credit Parties hereunder or under any other Credit Document.

(h) Representations and Warranties. Each of the representations and warranties set forth in Section 8 hereof or in any other Credit Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the date of the Closing Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as of such earlier date).

(i) Other Filings. Each of the Chapter 11 Plan, the Chapter 11 Plan Disclosure Statement, and Solicitation Motion (as defined in the RSA) shall have been or be concurrently filed with the Bankruptcy Court.

(j) Patriot Act. The Administrative Agent (or its counsel) shall have received at least three Business Days prior to the Closing Date such documentation and information as is reasonably requested in writing at least ten Business Days prior to the Closing Date by the Administrative Agent about the Credit Parties under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act.

(k) Assignment. Evidence that Wilmington Savings Fund Society, FSB has been assigned as administrative agent and collateral agent under each Pre-Petition Credit Agreement and the other Pre-Petition Credit Documents, such evidence in form and substance satisfactory to the Lenders and the Administrative Agent.

(l) No Default. On the Closing Date and immediately after giving effect to any Loans made on the Closing Date and the application of the proceeds thereof, no Default or Event of Default shall have occurred and be continuing on such date.

For purposes of determining compliance with the conditions specified in this Section 6.1 on the Closing Date, 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.

6.2 Conditions Precedent to the Funding Date. In addition to the conditions set forth in Section 6.1, the obligations of each Lender to make any Loan hereunder on the Funding Date is subject to the satisfaction or waiver (by the Required Lenders in their sole discretion, any which waiver, and the satisfaction of the Required Lenders with any document described in Section 6 may be communicated via an email from any of the Specified Lender Advisors), of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties set forth in Section 8 hereof or in any other Credit Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the Funding Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as of such earlier date).

(b) Notice of Borrowing. The Administrative Agent (or its counsel) shall have received a Notice of Borrowing with respect to the Term Loans meeting the requirements of Section 2.3(a).

(c) Compliance with RSA. The RSA shall be in full force and effect and no default by any of the Credit Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA, except as otherwise waived in accordance with the terms thereof.

(d) No Default. On the Funding Date and immediately after giving effect to any Loans made on the Funding Date and the application of the proceeds thereof, no Default or Event of Default shall have occurred and be continuing on such date.

(e) Flow of Funds Statement. The Administrative Agent shall have received a Flow of Funds Statement, in form and substance satisfactory to the Administrative Agent and the Required Lenders.

Section 7. Conditions Precedent to Withdrawal.

7.1 Conditions Precedent to Withdrawal. Any Withdrawal on or after the Funding Date is subject to the satisfaction or waiver of the following additional conditions precedent:

(a) No Default. At the time of and immediately after giving effect to such Withdrawal and the application of the proceeds thereof, no Default or Event of Default shall have occurred and be continuing on such date.

(b) Representations and Warranties. Each of the representations and warranties set forth in Section 8 hereof or in any other Credit Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the date of such Withdrawal with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as of such earlier date).

(c) Bankruptcy Proceedings. (i) The DIP Order, the Canadian Interim Orders and the Canadian Final Order (to the extent required to be in effect on the date of such Withdrawal) shall not have been vacated, stayed, reversed, modified, or amended, in whole or in any part, without the Administrative Agent's and the Required Lenders' written consent and shall otherwise be in full force and effect; (ii) no

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motion for reconsideration of the Final Order and/or the Canadian Final Order shall have been timely filed by a Debtor or any of their Subsidiaries; and (iii) no appeal of the Final Order and/or the Canadian Final Order shall have been timely filed.

(d) RSA. The RSA shall be in full force and effect and no default by any of the Credit Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA.

(e) Fee. All fees and expenses required to be paid under the Credit Documents shall have been paid (or will be paid from the proceeds of the Loans).

(f) Approved Budget. The proceeds of the Loans shall be used as set forth in the Approved Budget (subject to the Permitted Variance).

(g) Withdrawal Notice. The Borrower has delivered to the Administrative Agent (for distribution to the Lenders and the Specified Lender Advisors) an executed Withdrawal Notice, executed by the Borrower requesting the proposed Withdrawal thereunder by no later than 1:00 p.m. (New York City time) on the Wednesday of the week (provided that in connection with the Funding Date, such Withdrawal notice may be provided at least one Business Day prior to the Funding Date) for a proposed funding of such Withdrawal on Friday of such week, which Withdrawal Notice (other than the Withdrawal Notice delivered on the Funding Date) will set forth the Actual Liquidity as of the Friday prior to the date of such Withdrawal Notice.

(h) Maximum Withdrawal. The amount of such Withdrawal does not exceed the Maximum Withdrawal Amount.

(i) Orders. Other than in connection with the Withdrawal on the Funding Date, the Canadian Bankruptcy Court shall have entered the Canadian Interim Orders, and such orders shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion, be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent).

Notwithstanding the foregoing, if the Required Lenders determine that the Borrower has failed to satisfy the conditions precedent set forth in this Section 7 for a Withdrawal Notice and so advise the Administrative Agent in writing (directly or through the Specified Lender Advisors), the Administrative Agent (at the Direction of the Required Lenders) shall communicate the same to the Escrow Agent.

On any date on which the Loans shall have been accelerated, any amounts remaining in the Loan Proceeds Account, as the case may be, may be applied by the Administrative Agent to reduce the Loans then outstanding, in accordance with Section 5.3(d). None of the Credit Parties shall have (and each Credit Party hereby affirmatively waives) any right to withdraw, claim or assert any property interest in any funds on deposit in the Loan Proceeds Account upon the occurrence and continuance of any Default or Event of Default (except to fund the Carve Out).

The acceptance by the Borrower of the Loans or proceeds of a Withdrawal shall conclusively be deemed to constitute a representation by the Borrower that each of the conditions precedent set forth in Section 7 shall have been satisfied in accordance with its respective terms or has been irrevocably and expressly waived by the applicable Person; provided, however, that the making of any such Loan or Withdrawal (regardless of whether the lack of satisfaction was known or unknown at the time), shall not be deemed a modification or waiver by the Administrative Agent, any Lender or other Secured Party of the

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provisions of this Section 7 on such occasion or on any future occasion or operate as a waiver of (i) the right of Administrative Agent and Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent funding or issuance, (ii) any Default or Event of Default due to such failure of conditions or otherwise or (iii) any rights of any Agent, the Escrow Agent or any Lender as a result of any such failure of the Credit Parties to comply with such conditions precedent.

Section 8. Representations and Warranties

In order to induce the Lenders to enter into this Agreement and to make the Loans provided for herein, the Parent and the Borrower make the following representations and warranties to each Agent, the Escrow Agent and the Lenders on the date of each Credit Event (it being understood that the following representations and warranties shall be deemed made with respect to any Foreign Subsidiary only to the extent relevant under applicable law):

8.1 Corporate Status. Each Credit Party (a) is a duly organized and validly existing corporation, limited liability company or other entity in good standing (if applicable) under the laws of the jurisdiction of its organization and subject to entry of the Interim Order or the Final Order, as applicable, and subject to any restrictions arising on account of any Credit Party's status as a "debtor" under the Bankruptcy Code, has the corporate, limited liability company or other organizational power and authority to own its property and assets and to transact the business in which it is engaged and (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified or authorized, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

8.2 Corporate Power and Authority. Subject to the entry of the Interim Order or the Final Order, as applicable, each Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each Credit Party has duly executed and delivered each Credit Document to which it is a party and subject to the entry of the Interim Order or the Final Order, as applicable, each Credit Document constitutes the legal, valid, and binding obligation of each Credit Party enforceable in accordance with its terms, subject to the Legal Reservations.

8.3 No Violation. Subject to the entry of the Interim Order or the Final Order, as applicable, and the terms thereof, neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party nor compliance with the terms and provisions thereof nor the other transactions contemplated hereby or thereby will (a) contravene any applicable provision of any material law, statute, rule, regulation, order, writ, injunction or decree of any court or governmental instrumentality, (b) result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default (that is not excused by the Bankruptcy Code) under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of such Credit Party or any of its Subsidiaries (other than Liens created under the Credit Documents, the DIP Order, any restrictions arising on account of such Credit Party's status as a "debtor" under the Bankruptcy Code, or Permitted Liens) pursuant to, the terms of any indenture, loan agreement, lease agreement, mortgage, deed of trust, agreement or other instrument to which such Credit Party or any of its Subsidiaries is a party or by which it or any of its property or assets is bound (any such term, covenant, condition or provision, a "Contractual Requirement") other than, in the case of clause (b), to the extent any such breach, default or Lien would not reasonably be expected to result in a Material Adverse Effect or (c) violate any provision of the certificate of incorporation, by-laws, articles or other organizational documents of such Credit Party or any of its Subsidiaries.

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8.4 Litigation. Except for the Chapter 11 Cases and the Canadian Recognition Proceeding, there are no actions, suits or proceedings pending or, to the knowledge of any Credit Party, threatened in writing against any Credit Party or any of its Subsidiaries (a) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (b) that involves this Agreement or the Transactions.

8.5 Margin Regulations. Neither the making of any Loan hereunder nor the use of the proceeds thereof will violate the provisions of Regulation T, U or X of the Board.

8.6 Governmental Approvals. Subject to the entry of the Interim Order or the Final Order, as applicable, and the terms thereof, the execution, delivery and performance of each Credit Document does not require any consent or approval of, registration or filing with, or other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings, consents, approvals, registrations and recordings in respect of the Liens created pursuant to the Security Documents (and to release existing Liens), and (iii) such licenses, approvals, authorizations, registrations, filings or consents the failure of which to obtain or make would not reasonably be expected to result in a Material Adverse Effect.

8.7 Investment Company Act. No Credit Party nor any of its Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

8.8 True and Complete Disclosure.

(a) None of the written information and written data (taken as a whole) heretofore or contemporaneously furnished by or on behalf of the Credit Parties any of their Subsidiaries or any of their respective authorized representatives to the Administrative Agent and/or any Lender on or before the Closing Date (including all such written information and data contained in the Credit Documents) for purposes of or in connection with this Agreement or any transaction contemplated herein, contain any untrue statement of any material fact or omitted to state any material fact necessary to make such information and data (taken as a whole) not materially misleading at such time in light of the circumstances under which such information or data was furnished (after giving effect to all supplements and updates), it being understood and agreed that for purposes of this Section 8.8(a), such factual information and data shall not include pro forma financial information, projections, estimates (including financial estimates, forecasts, and other forward-looking information) or other forward-looking information and information of a general economic or general industry nature.

(b) The projections (including financial estimates, forecasts, and other forward-looking information) contained in the information and data referred to in paragraph (a) above were based on good faith estimates and assumptions believed by such Persons to be reasonable at the time made, it being recognized by the Lenders that such projections as to 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 and such differences may be material.

8.9 Financial Condition; Financial Statements.

(a) The Parent has heretofore furnished to the Lenders its audited consolidated balance sheet and statement of income, stockholders equity and cash flows as of and for the fiscal years ended January 31, 2019 and January 31, 2018. Such financial statements present fairly in all material respects the combined financial position of the Parent and its Subsidiaries at the respective dates of said information, statements and results of operations for the respective periods covered thereby. The financial statements



referred to in clause (a) of this Section 8.9 have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes to said financial statements.

(b) Since January 31, 2019, there has been no event, change or condition that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth in the financial statements referred to in Section 8.9(a), the Chapter 11 Cases and the Canadian Recognition Proceeding, there are no liabilities of any Credit Party of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which would reasonably be expected to result in a Material Adverse Effect.

8.10 Compliance with Laws; No Default. Subject to the entry of the Interim Order or the Final Order, as applicable, each Credit Party and each of its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except where the failure to be so in compliance would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

8.11 Tax Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or is excused by the Bankruptcy Court or as a result of the filing of the Chapter 11 Cases, (a) each Credit Party and each of its Subsidiaries has filed all Tax returns required to be filed by it (including in its capacity as withholding agent) and has timely paid all Taxes payable by it that have become due, and (b) there is no current or proposed Tax assessment, deficiency or other claim against any Credit Party or any of its Subsidiaries, other than, in each of clauses (a) and (b), those being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP or the nonpayment of which is permitted or required under the Bankruptcy Code.

8.12 Compliance with ERISA and Foreign Plans.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, no Foreign Plan Event has occurred or is reasonably expected to occur.

(c) Except as would not reasonably be expected to have a Material Adverse Effect:

(i) All Canadian Pension Plans are duly registered under the *Income Tax Act* (Canada), applicable pension standards legislation and any other applicable laws which require registration, and no event has occurred which could reasonably be expected to cause the loss of such registered status. Schedule 8.12 describes each Canadian Benefit Plan and lists the name and registration number of each Canadian Pension Plan. The Canadian Pension Plans and the Canadian Benefit Plans have each been administered, funded and invested in accordance with the terms of particular plan, all applicable laws including, where applicable, the *Income Tax Act* (Canada) and pension standards legislation, and the terms of all applicable collective bargaining agreements and employment contracts.

(ii) All material obligations of each Credit Party (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans, the Canadian Benefit Plans and the funding agreements therefor have been performed on a timely basis. There are no outstanding disputes concerning the assets of the Canadian Pension Plans or the Canadian Benefit Plans. No promises of material benefit improvements under the Canadian Pension Plans or the Canadian Benefit Plans have been made.

All employee and employer payments, contributions or premiums required to be withheld, made, remitted or paid to or in respect of each Canadian Pension Plan or Canadian Benefit Plan and all other amounts that are due to the pension fund of any Canadian Pension Plan from any Credit Party have been withheld, made, remitted or paid on a timely basis in accordance with the terms of such plans, any applicable collective bargaining agreement or employment contract and all applicable laws.

(iii) Any assessments owed to the Pension Fund established under the *Pension Benefits Act* (New Brunswick) or other assessments or payments required under similar legislation in any other jurisdiction, in respect of any Canadian Pension Plan have been paid when due. There has been no improper withdrawal or application of the assets of the Canadian Pension Plans or the Canadian Benefit Plans. No event has occurred which could reasonably be expected to give rise to a partial or full termination of any Canadian Pension Plan. No event has occurred or is reasonably expected to occur that could trigger or otherwise require immediate or accelerated funding in respect of any Canadian Benefit Plan.

8.13 Subsidiaries. Schedule 8.13 sets forth (a) a correct and complete list of the name and relationship to the Parent of each Subsidiary, (b) a true and complete listing of each class of the Borrower's authorized Equity Interests, all of which issued shares are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 8.13, and (c) the type of entity of the Parent and each Subsidiary. Except as set forth on Schedule 8.13 (or, as supplemented with the consent of the Required Lenders on or prior to the Final Hearing Date, as confirmed by any Specified Lender Advisors (which approval may be communicated via an email from any of the Specified Lender Advisors)), there are no outstanding commitments or other obligations of any Credit Party to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Credit Party.

8.14 Intellectual Property. Other than as a result of the Chapter 11 Cases and subject to any necessary orders or authorization of the Bankruptcy Court, each Credit Party and its Subsidiaries owns or is licensed to use all Intellectual Property that is material to and used in or otherwise necessary for the operation of their respective businesses as currently conducted. The operation of their respective businesses by each of the Credit Parties and its Subsidiaries does not infringe upon, misappropriate, violate or otherwise conflict with the Intellectual Property of any third party, except as would not be material to the businesses of each Credit Party and its Subsidiaries.

8.15 Environmental Laws.

(a) Except as set forth on Schedule 8.15, or as would not reasonably be expected to have a Material Adverse Effect: (i) each of the Credit Parties and its Subsidiaries and their respective operations and properties are in compliance with all applicable Environmental Laws; (ii) none of the Credit Parties or any Subsidiary has received written notice of any Environmental Claim; (iii) none of the Credit Parties or any Subsidiary is conducting any investigation, removal, remedial or other corrective action pursuant to any Environmental Law at any location; and (iv) no underground or above ground storage tank or related piping, or any impoundment or other disposal area containing Hazardous Materials is located at, on or under any Real Estate currently owned or leased by the Credit Parties or any Subsidiary.

(b) Except as set forth on Schedule 8.15, No Credit Party or any of its Subsidiaries has treated, stored, transported, Released or arranged for disposal or transport for disposal or treatment of Hazardous Materials at, on, under or from any currently or, formerly owned or operated property nor, to the knowledge of any Credit Party, has there been any other Release of Hazardous Materials at, on, under or from any such properties, in each case, in a manner that would reasonably be expected to have a Material Adverse Effect.

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8.16 Properties. Other than as a result of the Chapter 11 Cases and subject to any necessary authorization of the Bankruptcy Court:

(a) Each of the Credit Parties and its Subsidiaries has good and valid record title to, valid leasehold interests in, or rights to use, all properties that are necessary for the operation of their respective businesses as currently conducted and as proposed to be conducted, free and clear of all Liens (other than any Liens permitted by this Agreement) and except where the failure to have such good title or interest would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect and (b) no Mortgage encumbers improved Real Estate that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the National Flood Insurance Act of 1968, as amended, unless flood insurance available under such act has been obtained in accordance with Section 9.3(b).

(b) Set forth on Schedule 8.16(b) is a list of each real property owned by any Credit Party as of the Closing Date having a Fair Market Value in excess of \$1,000,000.

(c) Set forth on Schedule 8.16(c) is a list of each real property leased by any Credit Party as of the Closing Date where Collateral with an aggregate value in excess of \$1,000,000 is located.

8.17 No EEA Financial Institution. No Credit Party is an EEA Financial Institution.

8.18 Center of Main Interests. With respect to any Credit Party formed, incorporated or organized in the European Union, for the purposes of The Council of the European Union Regulation No 1346/2000 on Insolvency Proceedings (the "European Union Regulation"), its center of main interest (as that term is used in Article 3(1) of the European Union Regulation) is situated in its jurisdiction of incorporation, and it has no "establishment" (as that term is used in Article 2(h) of the European Union Regulation) in any other jurisdiction.

8.19 [Reserved].

8.20 OFAC; USA PATRIOT Act; FCPA.

(a) On the Funding Date and each Withdrawal Date, the use of proceeds of the Loans will not violate the PATRIOT Act, OFAC Regulations, and other Anti-Terrorism Laws.

(b) To the extent applicable, each Credit Party and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto ("OFAC Regulations"), (ii) the USA PATRIOT Act, (iii) the FCPA and (iv) AML Legislation, the *Corruption of Foreign Public Officials Act* (Canada) and any other similar applicable law.

(c) No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended ("FCPA").

(d) No Credit Party (i) is currently the subject of any Sanctions or (ii) is located, organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been used by any Credit Party, directly, to lend, contribute, provide or has otherwise made available to fund any activity or

business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender and the Administrative Agent) of Sanctions.

8.21 Security Interest in Collateral. Upon execution and delivery thereof by the parties thereto and upon the entry by the Bankruptcy Court of the Interim Order or the Final Order, as applicable, and subject to the provisions of this Agreement and the Security Documents, the Security Documents are effective to create (to the extent described therein) in favor of the Collateral Agent, for the benefit of itself and the other Secured Parties, a legal, valid and enforceable security interest in or liens on the Collateral described therein and the proceeds thereof, except as to enforcement, as the same may be limited by Bail-In Action, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing. Upon the entry by the Bankruptcy Court of the Interim Order or Final Order, as applicable, and in accordance therewith, the security interests and liens granted pursuant to the Interim Order, the Final Order and the Security Documents shall automatically, and without further action (other than, where necessary, any Foreign Law Security Filings), constitute a perfected security interest in (to the extent intended to be created thereby and required to be perfected under the Credit Documents) all right, title and interest of each pledgor or mortgagor (as applicable) party thereto in the Collateral described therein with respect to such pledgor or mortgagor (as applicable). Notwithstanding any other provision of this Agreement, capitalized terms that are used in this Section 8.21 and not defined in this Agreement are so used as defined in the applicable Security Document.

8.22 Use of Proceeds. Subject to the terms and conditions herein, the use of cash collateral and the proceeds of the Loans made hereunder shall be used by the Borrower, solely on or after the Closing Date, in accordance with the DIP Order and the Approved Budget (subject to Permitted Variances): (i) to pay related transaction costs, fees and expenses (including attorney's fees required to be paid hereunder and to fund the Carve Out) with respect to the DIP Facility, (ii) to make the adequate protection payments (if any) in accordance with the Approved Budget and the DIP Order, (iii) to fund the operation of certain non-Debtor Subsidiaries through "on-lending" or contributions of capital; provided that the proceeds of the Loans used to fund non-Debtor Subsidiaries under this Section 8.22(iii) shall not exceed the Maximum Non-Debtor Investment Cap, and (iv) to provide working capital, and for other general corporate purposes of the Credit Parties and their Subsidiaries, and to pay administration costs of the Chapter 11 Cases and the Canadian Recognition Proceeding and claims or amounts approved by the Court. The Credit Parties shall not be permitted to use the proceeds of the Loans or any cash collateral in contravention of the provisions of the Credit Documents, the DIP Order or the applicable Debtor Relief Laws, including any restrictions or limitations on the use of proceeds contained therein; provided that, no proceeds of the Loans will be used in connection with (including without limitation, to fund or prefund) any executive retention plan without the express written consent of the Required Lenders (which consent may be communicated via an email from any Specified Lender Advisor).

8.23 Insurance. The Credit Parties are in compliance with Section 9.3.

8.24 Reorganization Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date and the Canadian Recognition Proceedings were commenced thereafter, in accordance with applicable law and proper notice thereof was given for (x) the motion seeking approval of the Interim Order and the application seeking approval of the Canadian Interim Orders (y) the hearing for the entry of the Interim Order and the Canadian Interim Orders and (z) the hearing for the entry of the Final Order and the Canadian Final Order. The Debtors shall give, on a timely basis as specified in the Interim Order or Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) After entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against each Credit Party now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject only to the Carve Out and the priorities set forth in the Interim Order or the Final Order, as applicable. After entry of the Canadian Supplemental Order, and pursuant to and to the extent permitted in the Canadian Supplemental Order and the Canadian Final Order, the Obligations of the Debtors in Canada hereunder will be secured by the CCAA DIP Lender's Charge having priority over all claims or any nature or kind against the Debtors in Canada, subject only to the CCAA Administration Charge.

(c) The Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (with respect to the period on and after the entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without Administrative Agent and Required Lender consent (which consent of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors). The Canadian Supplemental Order (with respect to the period prior to the entry of the Canadian Final Order) or the Canadian Final Order (with respect to the period on and after the entry of the Canadian Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without Administrative Agent and Required Lender consent (which consent of the Required Lenders may be communicated via an email from either of the Specified Lender Advisors).

(d) Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise), the Agents, the Escrow Agent and Lenders shall be entitled to immediate payment of such Obligations in cash and to enforce the remedies provided for hereunder or under applicable law, without further notice, motion or application to, hearing before, or order by the Bankruptcy Court. Subject to the Canadian Supplemental Order or the Canadian Final Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise), the Agents, the Escrow Agent and Lenders shall be entitled to immediate payment of the Obligations in cash and to enforce the remedies provided for hereunder or under applicable law, without further notice, motion or application to, hearing before, or order by the Canadian Bankruptcy Court.

Section 9. Affirmative Covenants.

The Borrower hereby covenants and agrees that on the Closing Date and thereafter, until the Commitments have terminated in accordance with the terms of this Agreement and the Loans, together with interest, Fees and all other Obligations incurred hereunder (other than contingent indemnity obligations), are paid in full:

9.1 Information Covenants. The Borrower will furnish to the Administrative Agent and the Specified Lender Advisors:

(a) [Reserved].

(b) Quarterly Financial Statements; Monthly Financial Statements.

(i) Quarterly Financial Statements. Commencing with the fiscal quarter ending April

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30, 2020, as soon as available and in any event within five days after the date on which such financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) with respect to each of the first three quarterly accounting periods in each fiscal year of the Parent (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 45 days (or with respect to the fiscal quarter ending April 30, 2020, 60 days) after the end of each such quarterly accounting period), the consolidated balance sheets of the Parent and the Subsidiaries as at the end of such quarterly period and the related consolidated statements of operations for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly period, and the related consolidated statement of cash flows for the elapsed portion of the fiscal year ended with the last day of the applicable quarterly period, and setting forth comparative consolidated and/or combined figures for the related periods in the prior fiscal year or, in the case of such consolidated balance sheet, for the last day of the related period in the prior fiscal year, all of which shall be certified by an Authorized Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Parent and its Subsidiaries in accordance with GAAP (except as noted therein), subject to changes resulting from normal year-end adjustments and the absence of footnotes.

(ii) Monthly Financial Statements. Commencing with the month ending May 31, 2020, as soon as available but in any event not later than the thirtieth (30th) day (or with respect to the month ending May 31, 2020, forty-fifth (45th) day) after the end of month, the unaudited financial summary of the financial performance, the unaudited consolidated balance sheet and the unaudited consolidated statements of operations and comprehensive income, stockholders' equity and cash flows of the Parent and the Subsidiaries as of the end of and for such month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year.

(c) Officer's Certificates. Concurrently with the delivery of the financial statements provided for in Sections 9.1(a) and 9.1(b), a certificate of an Authorized Officer of the Borrower 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, as the case may be, which certificate shall set forth a specification of any change in the identity of the Subsidiaries as at the end of such fiscal period, as the case may be, from the Subsidiaries provided to the Lenders on the Closing Date or the most recent fiscal period, as the case may be.

(d) Notice of Material Events. Promptly (and in any event, unless otherwise set forth herein, within four Business Days thereof) after an Authorized Officer of any Credit Party or any of its Subsidiaries obtains knowledge thereof, notice of (i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto, (ii) any litigation or governmental proceeding pending against any Credit Party or any of its Subsidiaries that would reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse Effect and (iii) to the extent reasonably practicable, (i) at least three Business Days (provided that if delivery of such documents, motions, orders, or applications at least three Business Days in advance is not reasonably practicable prior to filing, such period for delivery may be shortened upon the consent of the Required Lenders (which consent may be communicated via email by any Specified Lender Advisor)) prior to the date when the Borrower intends to file the RSA, any documents implementing and achieving the Transactions (as defined in the RSA) and the transactions contemplated by the Credit Documents, as applicable, including any substantive "first day" or "second day" motions, the Chapter 11 Plan and any supplement thereto, the Chapter 11 Plan Disclosure Statement, any proposed order of the Bankruptcy Court approving the Chapter 11 Plan, any proposed order of the Bankruptcy Court approving the Chapter 11 Plan Disclosure Statement and the related solicitation

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materials, any proposed Interim Order and Final Order, any proposed Canadian Interim Orders, Canadian Final Order or Canadian Confirmation Order, in each case, with the Bankruptcy Court or the Canadian Bankruptcy Court, as applicable, and (ii) at least one (1) calendar day (or such shorter review period as necessary or appropriate) prior to the date when the Borrower intends to file any other material pleading with the Bankruptcy Court or the Canadian Bankruptcy Court (but excluding retention applications, fee applications, and any declarations in support thereof or related thereto);

(e) Notice of Environmental Matters. Promptly (and in any event within four Business Days thereof) after an Authorized Officer of any Credit Party or any Subsidiary thereof obtains knowledge of any one or more of the following environmental matters, unless such environmental matters would not reasonably be expected to result in a Material Adverse Effect, notice of:

(i) any pending or threatened Environmental Claim against any Credit Party or any Real Estate; and

(ii) the conduct of any investigation, or any removal, remedial or other corrective action in response to the actual or alleged presence, Release or threatened Release of any Hazardous Material on, at, under or from any Real Estate.

All such notices shall describe in reasonable detail the nature of the claim, investigation or removal, remedial or other corrective action in response thereto. The term "Real Estate" shall mean land, buildings, facilities and improvements owned or leased by any Credit Party or any of its Subsidiaries.

(f) Other Information. Promptly upon filing thereof, copies of any filings (including on Form 10-K, 10-Q or 8-K) or registration statements with, and reports to, the SEC or any analogous Governmental Authority in any relevant jurisdiction by any Credit Party (or any Parent Entity) or any of its Subsidiaries (other than amendments to any registration statement (to the extent such registration statement, in the form it becomes effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statements on Form S-8) and copies of all financial statements, proxy statements, notices, and reports that the Credit Parties or any of its Subsidiaries shall send to the holders of any publicly issued debt of the Parent and/or any of its Subsidiaries, in their capacity as such holders, lenders or agents (in each case to the extent not theretofore delivered to the Administrative Agent pursuant to this Agreement) and, with reasonable promptness, such other information (financial or otherwise) as the Administrative Agent, the Specified Lender Advisors, the Crossholder Lender Advisors or any Lender may reasonably request; provided that none of the Parent nor any of its Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective contractors) is prohibited by law, or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Notwithstanding the foregoing, the obligations in clauses (a) and (b) of this Section 9.1 may be satisfied with respect to financial information of the Credit Parties and their Subsidiaries by furnishing the applicable financial statements of the Parent or any direct or indirect parent of the Parent, as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, to the extent such information relates to a parent of Parent, such information is accompanied by consolidating or other information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Parent and its Subsidiaries on a standalone basis, on the other hand.

Documents required to be delivered pursuant to clauses (a) and (b) of this Section 9.1 (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 earliest date on which (i) the Borrower

posts such documents, or provides a link thereto on the Parent's or a Parent Entity's website on the Internet; (ii) such documents are posted on behalf of the Credit Parties on IntraLinks/IntraAgency or another 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 (iii) such financial statements and/or other documents are posted on the SEC's website on the internet at [www.sec.gov](http://www.sec.gov); provided that (A) the Borrower shall, at the request of the Administrative Agent, continue to deliver copies (which delivery may be by electronic transmission) of such documents to the Administrative Agent and (B) the Borrower shall in any event notify (which notification may be by facsimile or electronic transmission) the Administrative Agent of the posting of any such documents on any website described in this paragraph. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents and maintaining its copies of such documents. The Required Lenders may waive any delivery requirement set forth in this Section 9.1 (which waiver may be communicated via email by any Specified Lender Advisor).

Each Credit Party hereby acknowledges and agrees that, unless the Borrower notifies the Administrative Agent in advance, all financial statements and certificates furnished pursuant to Sections 9.1(a), (b) and (d) above are hereby deemed to be suitable for distribution, and to be made available, to all Lenders.

#### 9.2 Books, Records, and Inspections.

(a) The Parent will, and will cause each Subsidiary to, permit officers and designated representatives of the Administrative Agent, the Specified Lender Advisors or the Required Lenders to visit and inspect any of the properties or assets of the Parent and any such Subsidiary in whomsoever's possession to the extent that it is within such party's control to permit such inspection (and shall use commercially reasonable efforts to cause such inspection to be permitted to the extent that it is not within such party's control to permit such inspection), and to examine the books and records of the Parent and any such Subsidiary and discuss the affairs, finances and accounts of the Parent and of any such Subsidiary with, and be advised as to the same by, its and their officers and independent accountants, at any time during normal business hours and upon reasonable advance notice without limitation on frequency and to such extent as the Administrative Agent, the Specified Lender Advisors or the Required Lenders may desire. The Administrative Agent and the Required Lenders shall give the Borrower the opportunity to participate in any discussions with the Credit Parties' independent public accountants.

(b) The Parent will, and will cause each Subsidiary to maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Parent and any such Subsidiary, as the case may be.

9.3 Maintenance of Insurance. (a) The Parent will, and will cause each of its Subsidiary to, at all times maintain in full force and effect, with insurance companies that are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts as is reasonable and prudent in light of the size and nature of its business and the availability of insurance on a cost-effective basis and against at least such risks (and with such risk retentions) as is reasonable and prudent in light of the size and nature of its business and the availability of insurance on a cost-effective basis; and the Borrower will furnish to the Administrative Agent and the Specified Lender Advisors, promptly following written request from the Administrative Agent (acting at the Direction of the Required Lenders), information presented in reasonable detail as to the insurance so carried, (b) if (x) any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in

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effect or successor act thereto) and (y) the Collateral Agent shall have delivered a notice to the Borrower stating that such Mortgaged Property is located in such special flood hazard area with respect to which such flood insurance has been made available, then the applicable Credit Party shall (i) obtain flood insurance in such total amount and in such form as the Administrative Agent (acting at the Direction of the Required Lenders) or the Required Lenders may from time to time reasonably require, and otherwise comply with the Flood Insurance Laws, (ii) deliver to the Administrative Agent and the Specified Lender Advisors evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders), including, without limitation, a copy of the flood insurance policy and a declaration page relating to the insurance policies required by this Section 9.3 which shall (1) identify the addresses of each property located in a special flood hazard area, (2) indicate the applicable flood zone designation, the flood insurance coverage and the deductible relating thereto, (3) provide that the insurer will give the Administrative Agent forty-five days written notice of cancellation or non-renewal and shall include evidence of annual renewals of such insurance and (4) be otherwise in form and substance satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders) and (c) such insurance will (i) in the case of each casualty insurance policy, contain a lender loss payable endorsement that names the Collateral Agent, on behalf of the Secured Parties as the lender loss payee thereunder (or, in respect of insurance policies in Ireland, naming the Collateral Agent as co-insured) and (ii) in the case of each casualty insurance policy, contain an additional insured endorsement that names the Collateral Agent, on behalf of the Secured Parties as an additional insured thereunder (or, in respect of insurance policies in Ireland, naming the Collateral Agent as co-insured).

9.4 Payment of Taxes. The Parent or the Borrower will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all material Taxes imposed upon it (including in its capacity as a withholding agent) or upon its income or profits, or upon any properties belonging to it, prior to the date on which material penalties attach thereto, and all lawful material claims in respect of any Taxes imposed, assessed or levied that, if unpaid, would reasonably be expected to become a material Lien upon any properties of the Credit Parties or any of the Subsidiaries; provided that no Credit Party nor any of its Subsidiaries shall be required to pay any such Tax that is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP or the failure to pay (i) is permitted or required under the Bankruptcy Code or (ii) would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

9.5 Preservation of Existence; Consolidated Corporate Franchises. Subject to any necessary Bankruptcy Court approval, the Parent will, and will cause each Credit Party to, take all actions necessary (a) to preserve and keep in full force and effect its existence, organizational rights and authority and (b) to maintain its rights, privileges (including its good standing (if applicable)), permits, Intellectual Property rights, licenses and franchises necessary in the normal conduct of its business, in each case (other than with respect to the presentation of the existence, organizational rights and authority of the Credit Parties), except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided, however, that each Credit Party and its Subsidiaries may consummate any transaction permitted under Permitted Investments and Sections 10.2, 10.3, 10.4, or 10.5.

9.6 Compliance with Statutes, Regulations, Etc. The Parent will, and will cause each of its Subsidiary to, (a) comply with all applicable laws, rules, regulations, and orders applicable to it or its property, including, without limitation, applicable laws administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury and the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations promulgated thereunder, and all governmental approvals or authorizations required to conduct its business, and to maintain all such governmental approvals or authorizations in full force and effect, (b) comply with, and use commercially reasonable efforts to ensure compliance by all tenants and subtenants, if any, with, all Environmental Laws, and obtain and comply with and maintain, and use commercially reasonable efforts to ensure that all tenants and subtenants obtain and comply with

and maintain, any and all licenses, approvals, notifications, registrations or permits required by Environmental Laws, and (c) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal, and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, other than such orders and directives which are being timely contested in good faith by proper proceedings, except (i) in each case of (a), (b), and (c) of this Section 9.6, where the failure to do so would not reasonably be expected to result in a Material Adverse Effect or (ii) compliance is excused by, or otherwise prohibited by, the provisions of the Bankruptcy Code or as a result of the Chapter 11 Cases.

9.7 Employee Benefit Matters. (a) The Borrower will furnish to the Administrative Agent promptly following receipt thereof, copies of any documents described in Sections 101(k) or 101(l) of ERISA that any Credit Party or any of its Subsidiaries may request with respect to any Multiemployer Plan to which a Credit Party or any of its Subsidiaries is obligated to contribute; provided that if any Credit Party or any of its Subsidiaries have not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, then, upon reasonable request of the Administrative Agent or the Required Lenders (which request may be communicated via email by any Specified Lender Advisor), such Credit Party shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent and the Specified Lender Advisors (for distribution to the Lenders) promptly after receipt thereof.

9.8 Maintenance of Properties. Subject to any necessary Bankruptcy Court approval, the Parent will, and will cause each of its Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear, casualty, and condemnation excepted, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

9.9 Transactions with Affiliates. The Parent and the Borrower will conduct, and cause each of the Subsidiaries to conduct, all transactions with any of its Affiliates (other than the Credit Parties) involving aggregate payments or consideration in excess of \$1,000,000 for any individual transaction or series of related transactions on terms that are at least substantially as favorable to the Credit Party or such Subsidiary as it would obtain in a comparable arm's-length transaction with a Person that is not an Affiliate, as determined by the board of directors of the Borrower or such Subsidiary in good faith; provided that the foregoing restrictions shall not apply to (a) the transactions set forth in that certain cooperation agreement among the Debtors, certain of the Pre-Petition First Lien Lenders and the Pre-Petition Second Lien Lenders, the Sponsor (as defined herein) and each of the four (4) Luxembourg parent entities of Debtor Pointwell Limited, effective as of June 12, 2020, (b) transactions permitted by Section 10.5, (c) consummation of the Transactions and the payment of the Transaction Expenses, (d) the issuance of Capital Stock or Stock Equivalents of the Parent (or any direct or indirect parent thereof) or any of its Subsidiaries not otherwise prohibited by the Credit Documents, (e) [reserved], (f) employment and severance arrangements between the Credit Parties and the Subsidiaries and their respective officers, employees or consultants (including management and employee benefit plans or agreements, stock option plans and other compensatory arrangements) in the ordinary course of business and in effect on the Closing Date, (g) payments by the Parent (and any direct or indirect parent thereof) and the Subsidiaries pursuant to the tax sharing agreements among the Parent (and any such parent) and the Subsidiaries, (h) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, consultants, officers, employees of the Parent (or any direct or indirect parent thereof) and the Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Parent and the Subsidiaries, solely as to any costs and expenses in an aggregate amount not to exceed \$500,000, (i) [reserved], (j) transactions pursuant to any agreement or arrangement as in effect as of the Closing Date, (k) [reserved], (l) [reserved], (m) Affiliate repurchases of the Loans or Commitments to the extent permitted hereunder and the holding of such Loans or Commitments and the payments and other transactions

contemplated herein in respect thereof and (n) any customary transactions with a Receivables Subsidiary effected as part of the Receivables Facility.

9.10 End of Fiscal Years. The Parent and each of its Subsidiaries will maintain its fiscal year as in effect on the Closing Date unless the Required Lenders consent to any change to such fiscal year (which consent may be communicated via an email from any of the Specified Lender Advisors).

9.11 Additional Guarantors and Grantors. Subject to any applicable limitations set forth in the Security Documents, the Parent will take action necessary to cause each direct or indirect Subsidiary (other than any Excluded Subsidiary or any Immaterial Subsidiary (unless requested by the Required Lenders)) formed or otherwise purchased or acquired after the Closing Date and each other Subsidiary that ceases to constitute an Excluded Subsidiary, within 30 days (or 45 days with respect to any Subsidiary not organized in the United States, Canada or Ireland) from the date of such formation, acquisition, cessation or request, as applicable (or such longer period as the Required Lenders may agree in their reasonable discretion (such extension may be communicated via email by any Specified Lender Advisor)), to (a) be included in the grant of liens and claims in the DIP Order or take action necessary to cause such Person and/or (b) execute a supplement to each of the Guarantee, the U.S. Pledge Agreement or a Foreign Pledge Agreement, as applicable, and execute any of the Irish Security Documents, as applicable, and the U.S. Security Agreement or a Foreign Security Agreement, as applicable, in order to become a Guarantor under the Guarantee and a grantor under such Security Documents or, to the extent requested by the Collateral Agent (acting at the Direction of the Required Lenders), enter into a new Security Document substantially consistent with the analogous existing Security Documents and otherwise in form and substance reasonably satisfactory to the Collateral Agent (acting at the Direction of the Required Lenders) and take all other action requested by the Required Lenders (which may be communicated via email by any Specified Lender Advisor) to grant a perfected security interest in its assets to substantially the same extent as created and perfected by the Credit Parties on the Closing Date and pursuant to Section 9.14(d) in the case of such Credit Parties.

9.12 Pledge of Additional Stock and Evidence of Indebtedness. Subject to any applicable limitations set forth in the Security Documents, the Parent will cause (i) all certificates representing Capital Stock and Stock Equivalents of any Subsidiary held directly by any Credit Party representing Collateral, (ii) [reserved] and (iii) any promissory notes evidencing Indebtedness in excess of \$1,000,000 of the Credit Parties or any Subsidiary (other than any Excluded Subsidiary) that is owing to the any Credit Party, in each case, to be delivered to the Collateral Agent as security for the Obligations accompanied by undated instruments of transfer executed in blank pursuant to the terms of the Security Documents.

9.13 Use of Proceeds. The Parent and the Borrower will, and will cause each Subsidiary to use the proceeds of the Loans only for the purposes set forth in Section 8.22.

9.14 Further Assurances.

(a) Subject to the terms of Sections 9.11 and 9.12, this Section 9.14 and the Security Documents, the Parent and the Borrower will, and will cause each Credit Party to, execute any and all further documents, financing statements, agreements, and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust, and other documents) that may be required under any applicable law, or that the Collateral Agent (acting at the Direction of the Required Lenders) or the Required Lenders may reasonably request, in order to grant, preserve, protect, and perfect the validity and priority of the security interests created or intended to be created by the applicable Security Documents, all at the expense of the Borrower; provided that, notwithstanding anything to the contrary contained herein or in any other Credit Document, the Required Lenders may request the Parent to take action necessary to cause each Immaterial Subsidiary in existence

on the Closing Date, within 45 days from the date of such request (or such longer period as the Required Lenders may agree in their reasonable discretion (such extension may be communicated via email by any Specified Lender Advisor)), to take all actions contemplated under Section 9.12 to become a Guarantor and to grant a perfected security interest in its assets to substantially the same extent as created and perfected by the Credit Parties on the Closing Date.

(b) Subject to any applicable limitations set forth in the Security Documents, if any assets (including any real estate or improvements thereto or any interest therein) are acquired by any Credit Party after the Closing Date (other than assets constituting Collateral under a Security Document that become subject to the Lien of the applicable Security Document upon acquisition thereof) that are of a nature secured by a Security Document or that constitute a fee interest in real property, the Borrower will notify the Collateral Agent, and, if requested by the Required Lenders (which request may be communicated by email from any Specified Lender Advisor), the Credit Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or reasonably requested by the Required Lenders (which request may be communicated by email from any Specified Lender Advisor), including the granting of a Mortgage on such owned real estate, as soon as commercially reasonable but in no event later than 30 days thereafter (unless extended by the Required Lenders (which extension may be communicated by email from any Specified Lender Advisor) in their sole discretion), to grant and perfect such Liens consistent with the applicable requirements of the Security Documents, including actions described in clause (a) of this Section 9.14.

(c) Any Mortgage requested by the Required Lenders (which request may be communicated by email from any Specified Lender Advisor), shall be delivered within such time period as requested by the Required Lenders and accompanied by, in each case to the extent requested by the Required Lenders (which request may be communicated by email from any Specified Lender Advisor) (w) to the extent available in the applicable jurisdiction, a policy or policies (or an unconditional binding commitment therefor to be replaced by a final title policy) of title insurance issued by a title insurance company or similar insurer recognized in such jurisdiction, in such amounts as reasonably acceptable to the Required Lenders (which acceptance may be communicated by email from any Specified Lender Advisor) not to exceed the Fair Market Value of the applicable Mortgaged Property, insuring the Lien of each Mortgage as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 10.2 or as otherwise permitted by the Required Lenders and otherwise in form and substance reasonably acceptable to the Required Lenders (which acceptance may be communicated by email from any of the Specified Lender Advisor) (the "Title Policy"), together with, such endorsements, coinsurance and reinsurance as the Required Lenders may reasonably request but only to the extent such endorsements are (i) available in the relevant jurisdiction (provided that in no event shall the Administrative Agent request a creditors' rights endorsement) and (ii) available at commercially reasonable rates, (x) an opinion of local counsel to the applicable Credit Party in form and substance reasonably acceptable to the Required Lenders (which acceptance may be communicated by email from any of the Specified Lender Advisor), (y) with respect to property located in the United States, a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination, and if any improvements on such Mortgaged Property are located in a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Credit Parties and (ii) evidence the insurance required by Section 9.3 in form and substance reasonably satisfactory to the Required Lenders (which satisfaction may be communicated by email from any of the Specified Lender Advisor), and (z) an ALTA survey in a form and substance reasonably acceptable to the Required Lenders (which acceptance may be communicated by email from any Specified Lender Advisor) or such existing survey together with a no-change affidavit sufficient for the title company to issue the survey related endorsements and to remove all standard survey exceptions from the Title Policy related to such Mortgaged Property and issue the endorsements required in (w) above.

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(d) Post-Closing Covenant. The Parent agrees that it will, or will cause its Subsidiaries to complete each of the actions described on Schedule 9.14, in each case, as soon as commercially reasonable and by no later than the date set forth in Schedule 9.14 with respect to such action or such later date as the Required Lenders (which extension may be communicated by email from any Specified Lender Advisor) may agree in their sole discretion.

9.15 Maintenance of Ratings. Prior to the early to occur of (i) thirty days after the Petition Date and (ii) the entry of the Final Order, the Borrower will use commercially reasonable efforts to obtain and maintain a private corporate family and/or corporate credit rating, as applicable, and ratings in respect of the credit facilities provided pursuant to this Agreement (but not maintain any specific rating), in each case, from each of S&P and Moody's or, with the consent of the Required Lenders in the event that Moody's and/or S&P are not willing to so rate the Loans, such other rating agency, as applicable, as is acceptable to the Required Lenders (which acceptance may be communicated via email from any of the Specified Lender Advisors).

9.16 Lines of Business. The Parent, the Borrower and their Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by the Credit Parties and their Subsidiaries, taken as a whole, on the Closing Date and other business activities which are reasonable extensions thereof.

9.17 Center of Main Interests. With respect to any Credit Party formed, incorporated or organized in the European Union, for the purposes of the European Union Regulation, its center of main interest (as that term is used in Article 3(1) of the European Union Regulation) shall be situated in its jurisdiction of incorporation, and it has no "establishment" (as that term is used in Article 2(h) of the European Union Regulation) in any other jurisdiction.

9.18 Approved Budget.

(a) The Approved Budget shall set forth, on a weekly basis, among other things, Budgeted Cash Receipts, Budgeted Operating Disbursement Amounts, Budgeted Liquidity, Budgeted Restructuring Related Amounts and Budgeted Borrower Professional Fees for the 13-week period commencing with the first full week after the Closing Date and shall be approved by and in form and substance satisfactory to the Required Lenders (which satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors); provided that it is acknowledged and agreed by the parties hereto that the Initial Approved Budget is approved by and satisfactory to the Required Lenders and is and shall be the Approved Budget unless and until replaced in accordance with terms of this Section, and that with respect to any subsequent Approved Budget, such approval and satisfaction of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors. The Approved Budget shall be updated, modified or supplemented by the Borrower from time to time in writing transmitted to the Administrative Agent and the Specified Lender Advisors with the written consent of and/or at the request of the Required Lenders (with a copy of such written consent or request concurrently delivered to the Administrative Agent) (which consent may be communicated via an email from any of the Specified Lender Advisors) (any such proposed budget, the "**Proposed Budget**"), but in any event not less than one time in each four (4) consecutive week period, commencing with the first full week after the Closing Date, and each Proposed Budget shall be substantially in the form of the Initial Approved Budget and otherwise satisfactory to the Required Lenders, and no such Proposed Budget shall be effective unless acceptable to the Required Lenders (which acceptance may be communicated via an email from any of the Specified Lender Advisors); and upon delivery of such acceptance by the Required Lenders, such Proposed Budget shall be deemed the newly approved Approved Budget; provided, however, that in the event the Required Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall constitute an immediate Event of Default once the period

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covered by the prior approved Approved Budget has terminated (and at all times thereafter such then current approved Approved Budget shall remain in effect unless and until a new Approved Budget is approved by the Required Lenders (which approval may be communicated via an email from any of the Specified Lender Advisors)). Each Approved Budget shall be accompanied by such supporting documentation as reasonably requested by the Specified Lender Advisors and prepared in good faith based upon assumptions believed by the Borrower to be reasonable.

(b) For each Variance Testing Period, the Borrower shall not permit: (x) the Actual Cash Receipts to be less than Budgeted Cash Receipts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance for such Variance Testing Period and (y) Actual Operating Disbursement Amounts to exceed the Budgeted Operating Disbursement Amounts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance.

(c) The Borrower shall deliver to the Administrative Agent and the Specified Lender Advisors (for distribution to the Lenders) on or before 5:00 p.m. (New York City time) on Thursday of every other week (commencing on July 16, 2020), a certificate which shall include such detail as is reasonably satisfactory to the Required Lenders (which satisfaction may be communicated via an email from any of the Specified Lender Advisors), signed by an Authorized Officer of the Borrower (i) certifying that the Credit Parties are in compliance with the covenants contained in Section 9.18(a) and (b), (ii) certifying that no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, (iii) identifying the cumulative amount of any Investments made pursuant to clause (vi) of the definition of "Permitted Investments" as of the date of such report and (iv) certifying to the amount of Actual Liquidity as of the Friday of the prior calendar week, and attaching the Approved Budget Variance Report which shall be prepared by the Borrower as of the last day of the respective Variance Testing Period, and shall be in a form and substance satisfactory to the Required Lenders in their sole discretion (which satisfaction may be communicated via an email from any of the Specified Lender Advisors).

(d) The Administrative Agent and the Lenders (i) may assume that the Credit Parties will comply with the Approved Budget (subject to Permitted Variances), (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to the Administrative Agent and the Lenders are estimates only, and the Credit Parties remain obligated to pay any and all Obligations in accordance with the terms of the Credit Documents regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget shall constitute an amendment or other modification of any Credit Document or other lending limits set forth therein.

9.19 Cash Flow Forecast.

(a) The Borrower shall deliver to the Administrative Agent and the Specified Lender Advisors on or before 5:00 p.m. (New York City time) on Thursday every fourth week (commencing on July 16, 2020) supplemental Cash Flow Forecasts, which shall set forth, on a weekly basis, among other things, receipts, operating disbursements, liquidity and restructuring related amounts for such period. The projections delivered pursuant to this Section 9.19 shall not constitute the "Approved Budget" for any purpose hereunder.

9.20 Monthly Calls and Status Update Calls

(a) At one point during the month upon the request of the Required Lenders, with reasonable

notice and an agenda provided to management prior thereto, the Borrower shall conduct monthly telephone conferences which at the election of the Required Lenders can include, the Specified Lender Advisors, the Crossholder Lender Advisors and all or a portion of the Lenders (and can be split into (i) a Public Siders and non-Public Siders portion and (ii) a solely non-Public Sider Lenders portion) and permit questions from such Lenders and answers; provided that (I) questions from the Lenders shall be provided to the Borrower in writing no later than two (2) Business Days in advance and (II) for the avoidance of doubt, the Borrower shall not be obligated to disclose any material non-public information during the Public-Siders and non-Public-Siders portion of such telephone conferences;

(b) At the request of the Specified Lender Advisors (in consultation with the Crossholder Lender Advisors), not more than twice a month from and after the Petition Date through the Maturity Date, the Borrower shall hold a meeting (at a mutually agreeable location and time or telephonically with reasonable notice to management prior thereto) with management of the Borrower, the Specified Lender Advisors and the Crossholder Lender Advisors, which meeting, at the discretion of the Specified Lender Advisors (and the Crossholder Lender Advisors, solely with respect to the Ad Hoc Group of Crossholder Lenders), may include private side Lenders, public side Lenders and/or non-Public Sider Lenders; provided that the Specified Lender Advisors shall (i) communicate the participants to the Borrower in advance of such call or meeting and (ii) provide an agenda in advance of such call or meeting (which exercise of discretion may be communicated via an email from any of the Specified Lender Advisors) regarding the financing results, operations, compliance of the Credit Parties and developments in the Chapter 11 Cases or the Canadian Recognition Proceeding; provided, further, that any such meeting that occurs during the same week as the telephone conference outlined in Section 9.21(a) hereof may be combined with such telephone conference; and

(c) promptly upon any reasonable request of any Specified Lender Advisor hold a telephonic meeting with such Specified Lender Advisor regarding the financing results, operations, other business developments and developments in the Chapter 11 Cases or the Canadian Recognition Proceeding.

The Required Lenders may waive any requirements set forth in this Section 9.20 (which waiver may be communicated via e-mail by any Specified Lender Advisor).

9.21 Required Milestones. The Parent shall, or shall cause the following to occur, by the times and dates set forth below (as any such time and date may be extended, or any of such milestone set forth below may be modified, with the consent of the Required Lenders (which consent, and any consent of the Required Lenders described below may be communicated via an email from any of the Specified Lender Advisors)):

(a) By no later than one Business Day following the Petition Date, the Borrower shall file a Prepack Scheduling Motion seeking entry of the Prepack Scheduling Order, in form and substance reasonably acceptable to the Required Lenders.

(b) By no later than three Business Days following the Petition Date, the Bankruptcy Court shall enter (i) the Interim Order, and (ii) the Prepack Scheduling Order.

(c) By no later than four Business Days following the entry of the Interim Order and the Prepack Scheduling Order, Skillsoft Canada Ltd. shall have commenced the Canadian Recognition Proceeding.

(d) By no later than twenty-five calendar days following the Petition Date, the Bankruptcy Court shall enter the Final Order authorizing the DIP Facility, in form and substance reasonably acceptable to the Required Lenders and the Borrower.

(e) By no later than four Business Days following the entry of the Final Order, Skillsoft Canada Ltd. shall have filed a motion for the issuance by the Canadian Bankruptcy Court of the Canadian Final Order.

(f) By no later than sixty calendar days following the Petition Date, the Bankruptcy Court shall enter an order confirming the Chapter 11 Plan, in form and substance reasonably acceptable to the Required Lenders and the Borrower.

(g) By no later than four Business Days following the entry of the order confirming the Chapter 11 Plan, Skillsoft Canada Ltd. shall have filed a motion for the issuance by the Canadian Bankruptcy Court of the Canadian Confirmation Order.

(h) By no later than eighty calendar days following the Petition Date, the effective date of the Chapter 11 Plan shall have occurred.

9.22 Specified Lender Advisors.

(a) The Administrative Agent, on behalf of itself and the Lenders, the Collateral Agent, on behalf of its and the Secured Parties, the Lenders, each of the Specified Lender Advisors, on behalf of itself and the Lenders represented thereby, and the Crossholder Lender Advisors, on behalf of itself and the Lenders represented thereby, shall each be entitled to retain or continue to retain (either directly or through counsel) any advisor any Agent and the Ad Hoc Group of Lenders may deem necessary to provide advice, analysis and reporting for the benefit of the Agents or the Lenders. The Credit Parties shall pay all fees and expenses of such advisors in accordance with this Agreement and any other Credit Document, any applicable fee or engagement letters, and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Credit Parties and their advisors shall grant access to, and cooperate in all respects with, the Agents, the Lenders, the Specified Lender Advisors, the Agent Advisors and the Crossholder Lender Advisors and any other representatives of the foregoing and provide all information that such parties may request in a timely manner.

(b) The Borrower shall continue to retain the Company Advisors as company advisors consistent with the terms of their respective engagement agreements as in effect on the Closing Date or as otherwise agreed by the Required Lenders (which agreement may be communicated via an email from any of the Specified Lender Advisors).

9.23 Additional Bankruptcy Matters. The Borrower shall promptly provide the Administrative Agent, the Lenders and the Specified Lender Advisors with updates of any material developments in connection with the Credit Parties' reorganization efforts under the Chapter 11 Cases or the Canadian Recognition Proceeding, whether in connection with the sale of all or substantially all of the Parent's and its Subsidiaries' consolidated assets, the marketing of any Credit Parties' assets, the formulation of bidding procedures, auction plan, and documents related thereto, or otherwise

9.24 Debtor-in-Possession Obligations. The Borrower shall comply in a timely manner with its obligations and responsibilities as debtor-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the DIP Order, and any other order of the Bankruptcy Court or the Canadian Bankruptcy Court.

9.25 Deposit Accounts.

(a) Set forth on Schedule 9.25 is a list of each Bank Account of each Credit Party or its Subsidiaries as of the Closing Date. On or prior to 30 days after the Closing Date (or such later time to which the Required Lenders may reasonably agree), the Borrower (or applicable Credit Party) shall enter

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into a Control Agreement with each account bank, with respect to each Deposit Account (other than an Excluded Account) in which funds of any of the Credit Parties are deposited and a Control Agreement for any Securities Account (other than an Excluded Account) where securities are or may be maintained (including those existing as of the Closing Date). In addition, the Borrower (or applicable Credit Party) shall enter into a Control Agreement with respect to any such Deposit Account or Securities Account other than an Excluded Account which is established after the Closing Date, promptly and in any event within 30 days upon such establishment (or such longer period as the Required Lenders may agree in their discretion).

(b) The Borrower shall not permit more than \$250,000 in the aggregate deposited in any account maintained for the deposit of funds with a Canadian bank accepting funds for deposit in Canada.

9.26 Foreign Pledge. On or prior to 30 days after the Closing Date (or such later time to which the Required Lenders may reasonably agree (which agreement may be communicated via an email from any of the Specified Lender Advisors)), the Borrower shall execute a supplement to each of the U.S. Pledge Agreement or a Foreign Pledge Agreement, as applicable, and take all other action requested by the Required Lenders (which may be communicated via email by any Specified Lender Advisor) to grant a perfected security interest in 100% of the equity of each Subsidiary directly owned by any Credit Party; unless the Borrower delivers a tax analysis by independent certified public accountants of recognized national standing (which may be Ernst & Young LLP) concluding that a security interest in such equity would reasonably be expected to result in a material tax consequence to the Credit Parties as determined by the Required Lenders (in consultation with the Borrower); provided that no pledge or supplement shall be required to the extent the Required Lenders determine that the cost of obtaining a security interest therein (including any tax effects relating thereto) exceeds the practical benefit to the Lenders affected thereby.

Section 10. Negative Covenants

The Parent and the Borrower hereby covenants and agrees with the Lenders that on the Closing Date and thereafter, jointly and severally with all other Credit Parties, until the Commitments have terminated in accordance with the terms of this Agreement and the Loans, together with interest, Fees, and all other Obligations incurred hereunder, are paid in full that, unless consented to by the Required Lenders (which approval may be communicated via an email from any of the Specified Lender Advisors):

10.1 Limitation on Indebtedness. The Parent and the Borrower will not, and will not permit any Subsidiary to create, incur, issue, assume, guarantee or otherwise become liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence"), with respect to any Indebtedness, and the no Credit Party will issue any shares of Disqualified Stock and will not permit any Subsidiary to issue any shares of Disqualified Stock.

The foregoing limitations will not apply to:

- (a) Indebtedness arising under the Credit Documents;
- (b) (x) Indebtedness under (i) the Pre-Petition First Lien Credit Agreement in an aggregate principal amount not to exceed \$1,369,925,000, (ii) the Pre-Petition Second Lien Credit Agreement, in an aggregate principal amount not to exceed \$670,000,000 and (iii) under the Receivables Facility, in an aggregate principal amount not to exceed \$90,000,000.
- (c) (i) Indebtedness outstanding on the Closing Date listed on Schedule 10.1 and (ii) intercompany Indebtedness outstanding on the Closing Date listed on Schedule 10.1;

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- (d) [reserved];
- (e) Indebtedness incurred by any Credit Party, in respect of workers' compensation claims, performance or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement or indemnification type obligations regarding workers' compensation claims, performance or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance;
- (f) Capitalized Lease Obligations (i) outstanding on the Closing Date and (ii) incurred after the Closing Date in an aggregate amount not to exceed \$3,000,000;
- (g) Indebtedness of any Credit Party in respect of letters of credit with an aggregate face amount not to exceed \$2,000,000;
- (h) Indebtedness of any Credit Party owing to another Credit Party or of any Subsidiary that is not a Credit Party to another Subsidiary that is not a Credit Party;
- (i) Indebtedness of any Credit Party to the extent expressly permitted in the Approved Budget;
- (j) [reserved];
- (k) [reserved];
- (l) [reserved];
- (m) Indebtedness in connection with cash management and related banking services in the ordinary course;
- (n) guarantees of leases of any Credit Party in the ordinary course of business and in effect on the Closing Date;
- (o) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;
- (p) other Indebtedness in an aggregate amount not to exceed \$1,000,000; and
- (q) (1) any guarantee by a Credit Party of Indebtedness or other obligations of any Subsidiary that is a Credit Party or (2) by any Subsidiary that is not a Credit Party of Indebtedness of any other Subsidiary that is not a Credit Party; provided that any guarantee of Indebtedness permitted under this Section 10.1(q) is subordinated in right of payment to the Obligations; provided, further, that to the extent such Subsidiary is party to the Intercompany Note such loans and advances are subordinated to the Obligations on terms acceptable to the Required Lenders;

10.2 Limitation on Liens. The Parent and the Borrower will not, and will not permit any of the Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any property or assets of any kind (real or personal, tangible or intangible) of any Credit Party or any Subsidiary, whether now owned or hereafter acquired (each, a "Subject Lien"), except if such Subject Lien is a Permitted Lien.

10.3 Limitation on Fundamental Changes. Except in connection with the Chapter 11 Plan, the Credit Parties will not, and will not permit any of the Subsidiaries to, consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or

dissolution), or convey, sell, lease, assign, transfer or otherwise dispose of, all or substantially all its business units, assets or other properties, except that:

(a) The Credit Parties and any Subsidiary thereof may consummate transactions contemplated by the RSA;

(b) the Subsidiaries set forth on Schedule 10.3 may liquidate in the ordinary course; and

(c) so long as no Event of Default has occurred and is continuing or would result therefrom, (i) any Subsidiary of the Parent may be merged, amalgamated or consolidated with or into the Borrower in a transaction in which the Borrower is the surviving corporation and (ii) any Credit Party (other than the Parent or the Borrower) or any other Subsidiary may be merged into any other Credit Party in a transaction in which the surviving entity is a Credit Party.

10.4 Limitation on Sale of Assets. The Parent and the Borrower will not, and will not permit any of their Subsidiary to, consummate an Asset Sale, except that:

(a) any sale, transfer or disposition of (i) obsolete, worn out or surplus property or property (including leasehold property interests and Intellectual Property) that is no longer economically practical in its business or commercially desirable to maintain or no longer used or useful equipment (including any servers) in the ordinary course of business or (ii) Inventory in the ordinary course of business; provided that the Fair Market Value of all such sales, transfers and dispositions permitted by this clause (a)(i) from and after the Closing Date shall not exceed \$100,000 in the aggregate at any one time outstanding;

(b) any disposition of property or assets or issuance of securities by (i) a Credit Party to a Credit Party and (ii) a Subsidiary that is not a Credit Party to a Credit Party or other Subsidiary of the Parent;

(c) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Credit Parties or any of its Subsidiaries;

(d) sales of accounts receivable, or participations therein, and related assets in connection with the Receivables Facility in accordance with the Approved Budget;

(e) other sales, transfers or dispositions pursuant to an order of the Bankruptcy Court which sale, transfer or disposition are consistent with the RSA and the Approved Budget;

(f) [reserved];

(g) [reserved];

(h) leases, assignments, subleases, licenses, or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Parent and the Subsidiaries, taken as a whole in an aggregate amount not to exceed \$100,000 at any one time outstanding; and

(i) other Asset Sales in an aggregate amount not to exceed \$250,000.

provided that for any Asset Sales permitted under Section 10.4(a) or (i), such Credit Party or such Subsidiary must receive consideration at the time of such Asset Sale at least equal to the Fair Market Value (determined at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed

of; and 100% of the consideration therefor received by such Credit Party or such Subsidiary, as the case may be, is in the form of cash or Cash Equivalents;

For the avoidance of doubt, no Credit Party will, nor will it permit any Subsidiary to, enter into any Sale Leaseback.

10.5 Limitation on Restricted Payments. The Parent and the Borrower will not, and will not permit any Subsidiary to:

(a) declare or pay any dividend or make any payment or distribution on account of any Credit Party's or any of its Subsidiary's Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation, other than:

(i) Restricted Payments to effectuate the transactions contemplated by the RSA, or

(ii) dividends or distributions by a Subsidiary so long as, a Credit Party is the recipient of such dividend or distribution or such dividend or distribution by a Subsidiary that is not a Credit Party, so long as a Subsidiary that is not a Credit Party or a Credit Party is a recipient.

(b) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Parent or any direct or indirect parent company of the Parent, including in connection with any merger or consolidation;

(c) make any payment on, or redeem, repurchase, defease or otherwise acquire or retire for value in each case, prior to any scheduled repayment, sinking fund payment or maturity, the principal or interest of any Indebtedness incurred prior to the Petition Date (all such Indebtedness, including all loans under the Pre-Petition Credit Agreements and the Receivables Facility, the "**Pre-Petition Indebtedness**"), other than payment to certain creditors set forth in the Approved Budget and pursuant to an order of the Bankruptcy Court in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via an email from any of the Specified Lender Advisors); provided that notwithstanding the foregoing, the Credit Parties may make payments under the Receivables Facility in an amount not to exceed the cash collected in respect of receivables invested in the Receivables Subsidiary. Furthermore, no Credit Party will, nor will it permit any of its Subsidiaries, to amend the documents evidence any Pre-Petition Indebtedness other than as set forth in the RSA or the Chapter 11 Plan.

(d) of any Credit Party or any of its Subsidiary, repurchase or other acquisition of Pre-Petition Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition; or

(e) make any Restricted Investment;

(all such payments and other actions set forth in clauses (1) through (e) above (other than any exception thereto) being collectively referred to as "**Restricted Payments**").

10.6 Burdensome Agreements. The Parent and the Borrower will not, nor permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of such Credit Party or any of its Subsidiaries to:

(a) (i) pay dividends or make any other distributions to the Parent or any Subsidiary on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits or (ii) pay

any Indebtedness owed to the Parent or any Subsidiary;

(b) make loans or advances to the Parent or any Subsidiary; or

(c) sell, lease or transfer any of its properties or assets to the Parent or any Subsidiary; or

(d) create, incur, assume or suffer to exist any Lien on property of such Person for the benefit of the Lenders with respect to the Obligations under the Credit Documents, except (in each case) for such encumbrances or restrictions existing under or by reason of:

(i) contractual encumbrances or restrictions pursuant to this Agreement or in effect on the Closing Date and listed on Schedule 10.6;

(ii) the Pre-Petition Credit Documents;

(iii) purchase money obligations for property acquired in the ordinary course of business consistent with past practice and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (c) or clause (d) above on the property so acquired to the extent in existence on the Closing Date;

(iv) Requirement of Law or any applicable rule, regulation or order;

(v) [reserved];

(vi) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Parent pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary and restrictions on transfer of assets subject to Permitted Liens;

(vii) (x) secured Indebtedness otherwise permitted to be incurred pursuant to Sections 10.1 and 10.2 that limit the right of the debtor to dispose of the assets securing such Indebtedness and (y) restrictions on transfers of assets subject to Permitted Liens (but, with respect to any such Permitted Lien, only to the extent that such transfer restrictions apply solely to the assets that are the subject of such Permitted Lien);

(viii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business and in existence on the Closing Date;

(ix) other Indebtedness, Disqualified Stock or preferred stock of Subsidiaries permitted to be incurred subsequent to the Closing Date pursuant to the provisions of Section 10.1;

(x) customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to such joint venture and the Equity Interests issued thereby and in effect on the Closing Date;

(xi) customary provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, in each case, entered into in the ordinary course of business and in effect on the Closing Date; and

(xii) restrictions created in connection with the Receivables Facility as it existence on the Closing Date; provided that, any further amendments to the Receivables Facility must be

approved by the Required Lenders (such approval not to be unreasonably withheld or delayed) (which approval may be communicated by email by any Specified Lender Advisor).

10.7 [Reserved].

10.8 [Reserved].

10.9 [Reserved].

10.10 Orders. Notwithstanding anything to the contrary herein, no Credit Party nor any Subsidiary shall use any portion or proceeds of the Loans or the Collateral, or disbursements set forth in the Approved Budget, for payments or for purposes that would violate the terms of the DIP Order.

10.11 [Reserved]

10.12 Insolvency Proceeding Claims. No Credit Party nor any Subsidiary shall incur, create, assume, suffer to exist or permit any other super priority administrative claim which is pari passu with or senior to the claim of any Agent, the Escrow Agent or the Lenders against the Debtors, except as set forth in the DIP Order and the Canadian DIP Recognition Order.

10.13 Bankruptcy Actions. No Credit Party nor any of its Subsidiaries shall seek, consent to, or permit to exist, without the prior written consent of the Required Lenders (which approval may be communicated via an email from any of the Specified Lender Advisors) (which consent shall constitute authorization under this Agreement), any order granting authority to take any action that is prohibited by the terms of this Agreement, the DIP Order or the other Credit Documents or refrain from taking any action that is required to be taken by the terms of the DIP Order or any of the other Credit Documents.

10.14 Minimum Actual Liquidity. Commencing after the initial Withdrawal from the Loan Proceeds Account on the Funding Date, the Borrower shall not permit, as of the Friday of each calendar week following the Closing Date, Actual Liquidity to be less than \$10,000,000 (subject to Permitted Variances).

10.15 Canadian Pension Plans. No Credit Party in existence on the Closing Date, nor any Subsidiary created after the Closing Date (as permitted hereunder), shall, without the prior written consent of the Required Lenders (which consent may be communicated by any Specified Lender Advisor), commence to participate in a Canadian Defined Benefit Plan.

#### Section 11. Events of Default

11.1 Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code to the extent provided in the DIP Order, without notice, application or motion, hearing before, or order of the Bankruptcy Court or the Canadian Bankruptcy Court or any notice to any Credit Party, upon the occurrence of any of the following specified events (each, an "Event of Default"):

(a) Payments. The Borrower shall (a) default in the payment when due of any principal of the Loans or (b) default in the payment when due (or within one day of such due date) of any interest on the Loans or any Fees or of any other amounts owing hereunder or under any other Credit Document; or

(b) Representations, Etc. Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or any certificate delivered or required to be delivered pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which

made or deemed made; or

(c) Perfected Security Interest. Any Lien securing any Obligations shall cease to be a perfected, first priority Lien (subject to the Carve Out and other Liens specified in the DIP Order and the CCAA Administration Charge) with respect to any material portion of the Collateral; or

(d) ERISA and Other Employee Benefit Matters. Except to the extent excused by the Bankruptcy Court or as a result of the Chapter 11 Cases, (a) an ERISA Event or a Foreign Plan Event shall have occurred, (b) a trustee shall be appointed by a United States District Court to administer any Pension Plan(s), (c) the PBGC shall institute proceedings to terminate any Pension Plan(s), (d) any Credit Party or any of their respective ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such entity does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner or (e) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (a) through (e), that, when taken together with all other such events or conditions, if any, would reasonably be expected to result in a liability to any Credit Party in excess of \$500,000; or

(e) Covenants. Any Credit Party shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 9.1(d)(i), Section 9.5 (solely with respect to the Borrower), Section 9.13, 9.14(d), 9.18, 9.19, 9.20, 9.21, 9.23, 9.24, 9.25, 9.26 or Section 10 or (ii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in clause (i) or otherwise set forth in this Section 11.1) contained in this Agreement or any Security Document and such default shall continue unremedied for a period of at least 30 days after delivery of written notice by the Administrative Agent or the Required Lenders; or

(f) [Reserved]; or

(g) [Reserved]; or

(h) Judgments. Solely with respect to pre-petition actions, one or more judgments or decrees shall be entered against any Credit Party or any of the Subsidiaries involving a liability in excess of \$1,000,000 in the aggregate for all such judgments and decrees for the Parent and the Subsidiaries (to the extent not covered by insurance or indemnities as to which the applicable creditworthy insurance company has not denied coverage) and any such judgments or decrees shall not have been satisfied, vacated, discharged or stayed or bonded pending appeal within 30 days after the entry thereof; or

(i) Change of Control. Other than pursuant to the Chapter 11 Plan, a Change of Control shall occur; or

(j) Bankruptcy Events. The occurrence of any of the following in any of the Chapter 11 Cases or the Canadian Recognition Proceeding:

(i) other than a motion in support of the DIP Order, the bringing of a motion, taking of any action or the filing of any plan of reorganization, plan of liquidation or disclosure statement attendant thereto by any of the Credit Parties in the Chapter 11 Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code or under the CCAA not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than the Permitted Liens; (C) except as provided in the DIP Order, to use cash collateral of (1) the Administrative Agent and the other Secured Parties under Section 363(c) of the Bankruptcy Code without the prior written consent of the Required Lenders (which approval may be communicated via an email from

any of the Specified Lender Advisors) or (2) the Pre-Petition First Lien Lenders or the Pre-Petition First Lien Agent under Section 363(c) of the Bankruptcy Code without the prior written consents of the "Required Lenders" under the Pre-Petition First Lien Credit Agreement; or (D) to take any other action or actions adverse to the Administrative Agent and Lenders or their rights and remedies hereunder, under any other Credit Documents, or their interest in the Collateral;

(ii) (A) other than in accordance with the RSA, (1) the filing of any plan of reorganization, plan of liquidation or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by a Credit Party, in each case, that does not propose to Pay in Full the Obligations under this Agreement on or before the effective date of such plan or plans and to which the Required Lenders do not consent or (2) if any of the Credit Parties or their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order that does not propose to Pay in Full the Obligations under this Agreement on or before the effective date of such plan or plans, (B) the entry of any order terminating any Credit Party's exclusive right to file a plan of reorganization or plan of liquidation or disclosure statement attendant thereto (or such an order is sought by any party and is not actively contested by the Credit Parties), or (C) the expiration of any Credit Party's exclusive right to file a plan of reorganization or plan of liquidation;

(iii) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization or plan of liquidation that is not in accordance with the RSA or otherwise acceptable to the "Requisite Consenting Creditors" as defined in the RSA in their sole discretion (which acceptance may be communicated via an email from any of the Specified Lender Advisors);

(iv) (x) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Credit Documents, the DIP Order, the Cash Management Order, the Canadian Interim Orders or the Canadian Final Order, or any other order with respect to any of the Chapter 11 Cases or the Canadian Recognition Proceeding affecting in any material respect this Agreement and/or the other Credit Documents (including any order in respect of the Required Milestones specified herein) without the written consent of the Required Lenders or the filing by a Credit Party of a motion for reconsideration with respect to the DIP Order, or the Cash Management Order, the Canadian Interim Orders or the Canadian Final Order shall otherwise not be in full force and effect or (y) any Credit Party or any Subsidiary shall fail to comply with the DIP Order, the Cash Management Order or any other order with respect to any of the Chapter 11 Cases or the Canadian Recognition Proceeding affecting in any material respect this Agreement and/or the other Credit Documents, in any material respect;

(v) the Bankruptcy Court's or the Canadian Bankruptcy Court's entry of an order granting relief from the automatic stay under Section 362 of the Bankruptcy Code or the CCAA stay, as applicable, to permit foreclosure or to execute upon or enforce a Lien on any Collateral of a value in excess of \$100,000;

(vi) [reserved];

(vii) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a trustee or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Credit Parties;

(viii) (A) the dismissal or termination of any Chapter 11 Case or the Canadian Recognition Proceeding or (B) any Credit Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise, or the



termination of the Canadian Recognition Proceeding;

(ix) any Credit Party shall file a motion (without consent of the Required Lenders) seeking, or the Bankruptcy Court or the Canadian Bankruptcy Court shall enter an order granting, relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code or the CCA stay, as applicable (A) to allow any creditor (other than the Administrative Agent) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by the Required Lenders with any creditor of any Credit Party providing for payments as adequate protection or otherwise to such secured creditor (which approval may be communicated via an email from any of the Specified Lender Advisors) or (C) to permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(x) the entry of an order in the Chapter 11 Cases or the Canadian Recognition Proceeding avoiding or requiring the disgorgement of any portion of the payments made on account of the Obligations owing under this Agreement or the other Credit Documents or the Pre-Petition Obligations owing under the Pre-Petition Credit Documents;

(xi) the failure of any Credit Party to perform any of its obligations under the DIP Order, the Cash Management Order, the Canadian Interim Orders or the Canadian Final Order, or any order of the Bankruptcy Court approving any Transaction or to perform in any material respect its obligations under any order of the Bankruptcy Court approving bidding procedures;

(xii) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court or the Canadian Bankruptcy Court authorizing any claims or charges, other than in respect of this Agreement and the other Credit Documents, or as otherwise permitted under the applicable Credit Documents or permitted under the DIP Order, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code or superiority pursuant to the CCAA, as applicable, pari passu with or senior to the claims of the Administrative Agent and the Secured Parties under this Agreement and the other Credit Documents, or there shall arise or be granted by the Bankruptcy Court or the Canadian Bankruptcy Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except, in each case, as expressly provided in the Credit Documents or in the DIP Order or the Canadian DIP Recognition Order then in effect (including the Carve Out and the CCAA Administration Charge);

(xiii) the DIP Order shall cease to create a valid and perfected Lien (which creation and perfection shall not require any further action other than the entry of and terms of the DIP Order) on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Required Lenders;

(xiv) an order in the Chapter 11 Cases shall be entered (i) charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Administrative Agent and the Secured Parties, or the "Secured Parties" under either Pre-Petition Credit Agreement, or (ii) limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agents on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Credit Party after the Petition Date or the commencement of other legal proceeding by a Credit Party that are materially adverse to the Administrative Agent, the Secured Parties or their respective rights and remedies under the Credit Documents in any Chapter 11 Cases or inconsistent with the

Credit Documents;

(xv) any order having been entered or granted (or requested, unless actively opposed by the Credit Parties) by either any of the Bankruptcy Court, the Canadian Bankruptcy Court or any other court of competent jurisdiction materially adversely impacting the rights and interests of the Administrative Agent and the Lenders and the other Secured Parties, as determined by the Required Lenders, acting reasonably, without the prior written consent of the Administrative Agent and the Required Lenders;

(xvi) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Credit Parties authorized by the DIP Order;

(xvii) if the Final Order does not include a waiver, in form and substance satisfactory to the Administrative Agent and the Lenders (which satisfaction may be communicated via an email from any of the Specified Lender Advisors), of (i) the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code and (ii) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agents on the Pre-Petition Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Credit Party after the Petition Date;

(xviii) any Credit Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent, any Lender or any other Secured Party with respect to the Obligations or to the Pre-Petition Agents or the Pre-Petition Lenders with respect to the Pre-Petition Obligations, or without the consent of the Administrative Agent or the "Required Lenders" as defined in the Pre-Petition First Lien Credit Agreement, the filing of any motion by the Credit Parties seeking approval of (or the entry of an order by the Bankruptcy Court or the Canadian Bankruptcy Court approving) adequate protection to any Pre-Petition Agent or lender that is inconsistent with the DIP Order;

(xix) without the Administrative Agent's and the Required Lenders' consent, the entry of any order by the Bankruptcy Court or the Canadian Bankruptcy Court granting, or the filing by any Credit Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court or the Canadian Bankruptcy Court (in each case, other than the DIP Order and the Canadian DIP Recognition Order and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Administrative Agent's and the Required Lenders' consent or to obtain any financing under Section 364 of the Bankruptcy Code or the CCAA other than the Credit Documents;

(xx) if, unless otherwise approved by the Administrative Agent and the Required Lenders (which approval of the Required Lenders may be communicated via an email from any of the Specified Lender Advisors and which approval of the Administrative Agent may be communicated via an email from the Agent Advisors), an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Chapter 11 Cases and such order shall not be reversed or vacated within ten days;

(xxi) without Required Lender consent, any Credit Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court or the Canadian Bankruptcy Court seeking (a) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior or equal to the Collateral Agent's liens and security interests (except as provided in the DIP Order or the Canadian DIP Recognition Order); or (b) to modify or affect any of the rights of the Administrative Agent, the Lenders or any other

Secured Party under the DIP Order, the Canadian DIP Recognition Order, the Credit Documents, and related documents, other than in accordance with the Chapter 11 Plan;

(xxii) any Credit Party or any Subsidiary thereof or any Debtor shall commence any legal proceeding or take any action in support of any matter set forth in this Section 11.1(j) or any other Person shall do so and such application is not contested in good faith by the Credit Parties and the relief requested is granted in an order that is not stayed pending appeal

(xxiii) any Debtor shall be enjoined from conducting any material portion of its business, any disruption of the material business operations of the Debtors shall occur, or any material damage to or loss of material assets of any Debtor shall occur;

(xxiv) failure of any Credit Party to use the proceeds of the Loans as set forth in and in compliance with the Approved Budget (subject to Permitted Variance) and this Agreement;

(xxv) the occurrence of any RSA Termination Event (unless waived in accordance with the terms of the RSA); or

(xxvi) the Canadian DIP Recognition Order shall cease to create the CCAA DIP Lenders Charge (which creation and perfection shall not require any further action other than the entry of and terms of the Canadian DIP Recognition Order) on the Canadian Property or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Required Lenders.

#### 11.2 Remedies Upon Event of Default.

(a) Subject to the terms of the DIP Order and the Remedies Notice Period, if any Event of Default occurs and is continuing, notwithstanding the provisions of Section 362 of the Bankruptcy Code, and any stay under the CCAA, without any application, motion or notice to, hearing before, or order from the Bankruptcy Court or the Canadian Bankruptcy Court, then, the Administrative Agent, upon the Direction of the Required Lenders (subject to Section 13) shall declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement immediately become due and payable, but without affecting the Collateral Agent's Liens or the Obligations, and the Administrative Agent, upon the request of the Required Lenders (subject to Section 13), shall: (i) terminate, reduce or restrict the right or ability of the Credit Parties to use any cash collateral; (ii) declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement to be due and payable forthwith, whereupon the same shall immediately become due and payable, (iii) subject to the Remedies Notice Period, (A) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Credit Documents or applicable law or (B) take any and all actions described in the DIP Order; and (iv) deliver a Carve Out Trigger Notice.

(b) At any hearing during the Remedies Notice Period to contest the enforcement of remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred, and the Credit Parties hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent that such relief would in way impair or restrict the rights and remedies of the Administrative Agent or the Secured Parties, as set forth in this Agreement, the applicable DIP Order, Canadian DIP Recognition Order or other Credit Documents. Except as expressly provided above in this Article VII, to the maximum extent permitted by applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

11.3 License; Access; Cooperation. Subject to any previously granted licenses, each of the Administrative Agent and the Collateral Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (to the extent permitted under the applicable licenses and without payment of royalty or other compensation to any Person) any or all Intellectual Property of Credit Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral (in each case after the occurrence, and during the continuance, of an Event of Default). Each of the Administrative Agent and the Collateral Agent (together with its agents, representatives and designees) is hereby granted a non-exclusive right to have access to, and a rent free right to use, any and all owned or leased locations (including, without limitation, warehouse locations, distribution centers and store locations) for the purpose of arranging for and effecting the sale or disposition of Collateral, including the production, completion, packaging and other preparation of such Collateral for sale or disposition (it being understood and agreed that each of the Administrative Agent and the Collateral Agent and its representatives (and persons employed on their behalf), may continue to operate, service, maintain, process and sell the Collateral, as well as to engage in bulk sales of Collateral). Upon the occurrence and the continuance of an Event of Default and the exercise by the Administrative Agent or Lenders of their rights and remedies under this Agreement and the other Credit Documents, the Borrower shall assist the Administrative Agent, the Collateral Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the Administrative Agent and Required Lenders (which acceptance may be communicated via an email from any of the Specified Lender Advisors).

Section 12. Administrative Agent.

12.1 Appointment.

(a) Each Lender hereby irrevocably designates and appoints Wilmington Savings Fund Society, FSB as Administrative Agent and Escrow Agent hereunder and under the other Credit Documents, as applicable, and irrevocably authorizes the Administrative Agent and the Escrow Agent, each in its respective capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent and the Escrow Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Section 12 (other than Sections 12.1, 12.9, 12.11 and 12.12 with respect to the Parent) are solely for the benefit of the Agents, the Escrow Agent and the Lenders, and none of the Parent, the Borrower or any other Credit Party shall have rights as third party beneficiary of any such provision. Notwithstanding any provision to the contrary elsewhere in this Agreement or any other Credit Document, neither Administrative Agent nor the Escrow Agent will have any duties or responsibilities, except those expressly set forth herein or in the Escrow Agreement, as applicable, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against the Administrative Agent or the Escrow Agent. In performing its functions and duties hereunder, each Agent and the Escrow Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Credit Party or any of their respective Subsidiaries.

(b) The Administrative Agent and each Lender hereby irrevocably designate and appoint the Collateral Agent as the agent with respect to the Collateral, and each of the Administrative Agent and each Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding

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any provision to the contrary elsewhere in this Agreement or any other Credit Document, the Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any of the Administrative Agent and the Lenders and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against the Collateral Agent.

(c) Each Lender hereby irrevocably authorizes the Administrative Agent, based upon the instruction of the Required Lenders (but subject in all respects to the RSA), to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted by the Administrative Agent or the Collateral Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC (or any equivalent provision of the UCC), and the PPSA, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, or under Canadian Bankruptcy and Insolvency Law, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Requirements of Law. In no event shall the Agent be obligated to take title to or possession of Collateral in its own name, or otherwise in a form or manner that may, in its reasonable judgment, expose it to liability; provided that if any Agent declines to take title to or possession of Collateral because it exposes it to liability, it will promptly notify the Specified Lender Advisors thereof.

(d) Each Lender irrevocably appoints each other Lender as its agent and bailee for the purpose of perfecting Liens (whether pursuant to Section 8-301(a)(2) of the UCC or otherwise), for the benefit of the Secured Parties, in assets in which, in accordance with the UCC and the PPSA or any other applicable Requirement of Law a security interest can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly following the Administrative Agent's request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

12.2 Delegation of Duties. The Agents may each execute any of its duties under this Agreement and the other Credit Documents by or through agents, sub-agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents, subagents or attorneys-in-fact selected by it in the absence of its gross negligence or willful misconduct (as determined in the final non-appealable judgment of a court of competent jurisdiction).

12.3 Exculpatory Provisions. No Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by any of them under or in connection with this Agreement or any other Credit Document (except for its or such Person's own gross negligence or willful misconduct, as determined in the final non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein) or (b) responsible in any manner to any of the Lenders or any participant for any recitals, statements, representations or warranties made by any Credit Party or any officer thereof contained in this Agreement or any other Credit Document or in any certificate, report, statement or other document referred to or provided for in, or received by such Agent under or in connection with, this Agreement or any other Credit Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Credit Document, or the creation, perfection or priority of any Lien or security interest created or purported to be created under the Security Documents, or for any failure of any Credit Party to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party or any Affiliate thereof. The Collateral Agent shall not be under any obligation

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to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party. The rights, privileges, protections, immunities and benefits given to each Agent, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable: (i) by such Agent in each Credit Document and any other document related hereto or thereto to which it is a party and (ii) the entity serving as such Agent in each of its capacities hereunder and in each of its capacities under any Credit Document whether or not specifically set forth therein and each agent, custodian and other Person employed to act hereunder and under any Credit Document or related document, as the case may be. Notwithstanding anything contained in this Agreement to the contrary, neither Agent shall be under any obligation (i) to monitor, determine or verify the unavailability or cessation of LIBOR or the Eurocurrency Rate (or other applicable benchmark interest rate), or whether or when there has occurred, or to give notice to any other transaction party of the occurrence of, any date on which such rate may be required to be transitioned or replaced in accordance with the terms of the Credit Documents, applicable law or otherwise, (ii) to select, determine or designate any replacement to such rate, or other successor or replacement benchmark index, or whether any conditions to the designation of such a rate have been satisfied, (iii) to select, determine or designate any modifier to any replacement or successor index, or (iv) to determine whether or what any amendments to this Agreement or the other Credit Documents are necessary or advisable, if any, in connection with any of the foregoing. Neither Agent shall be liable for any inability, failure or delay on its part to perform any of its duties set forth in this Agreement or any other Credit Document as a result of the unavailability of LIBOR or the Eurocurrency Rate (or other applicable benchmark interest rate), including as a result of any inability, delay, error or inaccuracy on the part of any other party, including without limitation the Required Lenders or the Credit Parties, in providing any direction, instruction, notice or information required or contemplated by the terms of this Agreement and reasonably required for the performance of such duties. Neither Agent shall have any liability for any interest rate published by any publication that is the source for determining the interest rates of the Loans, including but not limited to Bloomberg (or any successor source) and the Reuters Screen (or any successor source), or for any rates compiled by the ICE Benchmark Administration or any successor thereto, or for any rates published on any publicly available source, including without limitation the Federal Reserve Bank of New York's Website, or in any of the foregoing cases for any delay, error or inaccuracy in the publication of any such rates, or for any subsequent correction or adjustment thereto.

12.4 Reliance by Agents. The Agents shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or instruction believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including the Agent Advisors, the Lender Advisors, the Specified Lender Advisors and counsel to the Escrow Agent), independent accountants and other experts selected by such Agent. Each Agent may deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Credit Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or a Direction of the Required Lender or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Credit Documents in accordance with a request of the Required Lenders or a Direction of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans; provided that the Administrative Agent and the Collateral Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Credit Document or applicable law. Notwithstanding anything contained in this Credit Agreement or the other Credit Documents to the contrary, without limiting any rights,

protections, immunities or indemnities afforded to the Administrative Agent and the Collateral Agent hereunder (including without limitation this Section 12), phrases such as “satisfactory to the [Administrative] [Collateral] Agent,” “approved by the [Administrative] [Collateral] Agent,” “acceptable to the [Administrative] [Collateral] Agent,” “as determined by the [Administrative] [Collateral] Agent,” “designed by the [Administrative][Collateral] Agent”, “specified by the [Administrative][Collateral] Agent”, “in the [Administrative] [Collateral] Agent’s discretion,” “selected by the [Administrative] [Collateral] Agent,” “elected by the [Administrative] [Collateral] Agent,” “requested by the [Administrative] [Collateral] Agent,” “in the opinion of the [Administrative] [Collateral] Agent,” and phrases of similar import that authorize or permit the Administrative Agent or the Collateral Agent to approve, disapprove, determine, act, evaluate or decline to act in its discretion shall be subject to the Administrative Agent or Collateral Agent, as applicable, receiving a Direction of the Required Lenders or other written direction from the Lenders or Required Lenders, as applicable, to take such action or to exercise such rights.

12.5 Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders, the Escrow Agent and the Collateral Agent. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement requires that such action be taken only with the approval of the Required Lenders or each of the Lenders, as applicable.

12.6 Non-Reliance on Administrative Agent, Collateral Agent, and Other Lenders. Each Lender expressly acknowledges that no Agent nor the Escrow Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by any Agent or the Escrow Agent hereinafter taken, including any review of the affairs of any Credit Party, shall be deemed to constitute any representation or warranty by any Agent or the Escrow Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon the Agents or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of an investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and each other Credit Party and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Agents or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Credit Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of any of the Credit Parties. Except for notices, reports, and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent nor the Escrow Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, financial condition, prospects or creditworthiness of any Credit Party that may come into the possession of any Agent or the Escrow Agent or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

12.7 Indemnification. The Lenders agree to severally indemnify each Agent and the Escrow Agent in its capacity as such (to the extent not reimbursed by the Credit Parties and without limiting the obligation of the Credit Parties to do so), ratably according to their respective portions of the Total Credit

Exposure in effect on the date on which indemnification is sought (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with their respective portions of the Total Credit Exposure in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind whatsoever that may at any time (including at any time following the payment of the Loans) be imposed on, incurred by or asserted against an Agent or the Escrow Agent in any way relating to or arising out of the Commitments, this Agreement, any of the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the any Agent or the Escrow Agent under or in connection with any of the foregoing; provided that no Lender shall be liable to an Agent or the Escrow Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's or the Escrow Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction; provided, further, that no action taken by any Agent or the Escrow Agent in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Credit Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 12.7. In the case of any investigation, litigation or proceeding giving rise to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur (including at any time following the payment of the Loans), this Section 12.7 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each Agent and the Escrow Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorneys' fees) incurred by such Agent or the Escrow Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice rendered in respect of rights or responsibilities under, this Agreement, any other Credit Document, or any document contemplated by or referred to herein, to the extent that such Agent or the Escrow Agent is not reimbursed for such expenses by or on behalf of the Borrower; provided that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto. If any indemnity furnished to any Agent or the Escrow Agent for any purpose shall, in the opinion of such Agent or the Escrow Agent, as applicable, be insufficient or become impaired, such Agent or the Escrow Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided that in no event shall this sentence require any Lender to indemnify any Agent or the Escrow Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's pro rata portion thereof; and provided, further, this sentence shall not be deemed to require any Lender to indemnify any Agent or the Escrow Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement resulting from such Agent's or the Escrow Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. The agreements in this Section 12.7 shall survive the payment of the Loans and all other amounts payable hereunder. The indemnity provided to each Agent and the Escrow Agent under this Section 12.7 shall also apply to such Agent's and the Escrow Agent's respective Affiliates, directors, officers, members, partners, representatives, assigns, controlling persons, employees, trustees, investment advisors and agents and successors.

12.8 Agents in Their Individual Capacities. If applicable, the agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. Each Agent, the Escrow Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Credit Party as though such Agent or the Escrow Agent were not an Agent or the Escrow Agent hereunder and under the other Credit Documents. With respect to the Loans made by it, each Agent and the Escrow Agent shall have the same rights and powers under this Agreement and the other Credit Documents as any Lender and may



exercise the same as though it were not an Agent or the Escrow Agent, and the terms Lender and Lenders shall include each Agent and the Escrow Agent in its individual capacity.

12.9 Successor Agents.

(a) Each Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right (subject to the consent of the Borrower (not to be unreasonably withheld, delayed or conditioned) so long as no Event of Default is continuing), 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 Agent gives notice of its resignation (the "Resignation Effective Date"), then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above (including receipt of the Borrower's consent); provided that if the any Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice.

(b) [Reserved].

(c) With effect from the Resignation Effective Date, (1) the retiring or removed agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Credit Documents, the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the retiring Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as the Administrative Agent or the Collateral Agent, as the case may be, hereunder, and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Security Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section 12.9). Except as provided above, any resignation of Wilmington Savings Fund Society, FSB as the Administrative Agent pursuant to this Section 12.9 shall also constitute the resignation of Wilmington Savings Fund Society, FSB as the Collateral Agent and the Escrow Agent, subject to the terms of the Escrow Agreement. The fees payable by the Borrower (following the effectiveness of such appointment) to such Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Credit Documents, the provisions of this Section 12 (including Section 12.7) and Section 13.5 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as an Agent.

12.10 Withholding Tax. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender under any Credit Document an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of

a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective) or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding Tax from such payment, such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by any applicable Credit Party and without limiting the obligation of any applicable Credit Party to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including penalties, additions to Tax and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Credit Document against any amount due to the Administrative Agent under this Section 12.10. The agreements in Section 12.10 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

12.11 Agents Under Security Documents and Guarantee. Each Secured Party hereby further authorizes the Administrative Agent or the Collateral Agent, as applicable, on behalf of and for the benefit of the Secured Parties, to be the agent for and representative of the Secured Parties with respect to the Collateral and the Security Documents. Subject to Section 13.1, without further written consent or authorization from any Secured Party, the Administrative Agent or the Collateral Agent, as applicable, may execute any documents or instruments necessary to (a) release any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent (or any sub-agent thereof) under any Credit Document (i) upon the Maturity Date and Full Payment of all Obligations (except for contingent indemnification obligations), (ii) that is sold or to be sold or transferred as part of or in connection with any sale or other transfer permitted hereunder or under any other Credit Document to a Person that is not a Credit Party, (iii) if the property subject to such Lien is owned by a Credit Party, upon the release of such Credit Party from its Guarantee otherwise in accordance with the Credit Documents, (iv) as to the extent provided in the Security Documents, (v) that constitutes Excluded Property or (vi) if approved, authorized or ratified in writing in accordance with Section 13.1; (b) release any Guarantor from its obligations under the Guarantee if such Person ceases to be a Credit Party (or becomes an Excluded Subsidiary) as a result of a transaction or designation permitted hereunder or (c) subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Credit Document to the holder of any Lien permitted under clause (vi) (solely with respect to Section 10.1(d)), and (ix) of the definition of Permitted Lien. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Credit Parties, or upon or as a result of the appointment of a receiver, receiver and manager, intervenor or conservator of, or trustee or similar officer for, the Credit Parties or any substantial part of its property, or otherwise, all as though such payment had not been made.

The Collateral Agent shall have its own independent right to demand payment of the amounts payable by the Borrower under this Section 12.11, irrespective of any discharge of the Borrower's obligations to pay those amounts to the other Lenders resulting from failure by them to take appropriate steps in insolvency proceedings affecting the Borrower to preserve their entitlement to be paid those amounts.

Any amount due and payable by the Borrower to the Collateral Agent under this Section 12.11 shall be decreased to the extent that the other Lenders have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Credit Documents and any amount due and

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payable by the Borrower to the Collateral Agent under those provisions shall be decreased to the extent that the Collateral Agent has received (and is able to retain) payment in full of the corresponding amount under this Section 12.11.

Prior to taking any action or executing any document pursuant to this Section 12.11 or Section 12.12, each of the Administrative Agent and the Collateral Agent shall be entitled to receive, and may conclusively rely upon without incurring liability therefor, an officer's certificate executed by a Financial Officer of the Borrower certifying that such action and execution of such documents are authorized and permitted under this Agreement and any other Credit Document and all conditions precedent to such release or execution have been satisfied. The Administrative Agent and the Collateral Agent shall not be liable for executing any documents or instruments pursuant to Section 12.11 or 12.12 to the extent the Collateral Agent did so upon the Direction of the Required Lenders (which consent may be provided via email by any of the Specified Lender Advisors).

12.12 Right to Realize on Collateral and Enforce Guarantee.

(a) Anything contained in any of the Credit Documents to the contrary notwithstanding, the Borrower (on behalf of itself and each other Credit Party), the Administrative Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Credit Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Administrative Agent or the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Administrative Agent or the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code) may, upon instruction from the Required Lenders, be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent or the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent or the Collateral Agent at such sale or other disposition.

(b) Release of Collateral and Guarantees, Termination of Credit Documents.

(i) Notwithstanding anything to the contrary contained herein or any other Credit Document, when all Obligations have been Paid in Full and all Commitments have terminated or expired, upon request of the Borrower, the Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any other Secured Party) take such actions as shall be required or reasonably requested to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Credit Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Credit Party, or upon or as a result of the appointment of a receiver, receiver and manager, intervenor or conservator of, or trustee or similar officer for, any Credit Party or any substantial part of its property, or otherwise, all as though such payment had

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not been made.

(ii) The Agents 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 Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(iii) In case of the pendency of any proceeding under the Bankruptcy Code or any other Debtor Relief Laws relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

- (A) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;
- (B) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due the Administrative Agent under this Agreement) allowed in such judicial proceeding; and
- (C) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;
- (D) and any custodian, administrator, administrative receiver, receiver, receiver and manager, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under this Agreement. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

(iv) 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 any plan of reorganization, plan of liquidation, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

12.13 Lender Action Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Credit Party or any other obligor under any of the Credit Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures or cause any of the foregoing (through Affiliates or otherwise), with respect to any Collateral or any other property of any such Credit Party, without the prior written consent of the Administrative Agent (at the Direction of the Required Lenders). Without limiting the foregoing, each Lender agrees that, except as otherwise provided in any Credit Documents or with the written consent of the Administrative Agent (at the Direction of the Required Lenders), it will not take any enforcement action, accelerate Obligations under any Credit Documents, or exercise any right that it might otherwise have under applicable Requirement of Law to credit bid or purchase any portion of the Collateral at any sale or foreclosure thereof referred to in Section 12.1; provided that nothing contained in this Section shall affect any Lender's right to credit bid its pro rata share of the Obligations pursuant to Section 363(k) of the Bankruptcy Code.

12.14 Carve Out Account. In connection with the DIP Order, the Administrative Agent is hereby authorized and directed to establish and maintain a single segregated non-interest bearing trust account which shall be designated as the "Pre-Carve Out Trigger Notice Reserve Account" and a single segregated non-interest bearing trust account which shall be designated as the "Post-Carve Out Trigger Notice Reserve Account" (such accounts, collectively, the "Carve Out Accounts"). Funds will be deposited into and remitted from the Carve Out Accounts in accordance with and pursuant to the terms of the DIP Order.

Section 13. Miscellaneous

13.1 Amendments, Waivers, and Releases.

(a) (a) Neither this Agreement nor any other Credit Document, nor any terms hereof or thereof, may be amended, supplemented or modified except in accordance with the provisions of this Section 13.1. Other than with respect to any amendment, modification or waiver contemplated in the proviso to clause (i) below, which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders, the Required Lenders may, or, with the written consent of the Required Lenders, the Administrative Agent and/or the Collateral Agent may, from time to time, (A) enter into with the relevant Credit Party or Credit Parties written amendments, supplements or modifications hereto and to the other Credit Documents for the purpose of adding any provisions to this Agreement or the other Credit Documents or changing in any manner the rights of the Lenders or of the Credit Parties hereunder or thereunder or (B) waive in writing, on such terms and conditions as the Required Lenders or the Administrative Agent and/or the Collateral Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Credit Documents or any Default or Event of Default and its consequences; provided, however, that each such waiver and each such amendment, supplement or modification shall be effective only in the specific instance and for the specific purpose for which given; and provided, further, that no such waiver and no such amendment, supplement or modification shall (x) (i) forgive or reduce any portion of any Loan or extend the scheduled maturity date of any Loan or reduce the stated rate of interest, premium or fees (it being understood that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the "default rate" or amend Section 2.8(c)), or forgive any portion thereof, or extend the date for the payment of any interest,

premium or fee payable hereunder (other than as a result of waiving the applicability of any post-default increase in interest rates), or amend or modify any provisions of Sections 5.3(a) (with respect to the ratable allocation of any payments only) 13.9(a) or 13.20, or make any Loan, interest, Fee or other amount payable in any currency other than expressly provided herein, in each case without the written consent of each Lender directly and adversely affected thereby; provided that a waiver of any condition precedent in Sections 6 or 7 of this Agreement, the waiver of any Default, Event of Default, default interest, mandatory prepayment or reductions, any modification, waiver or amendment to the financial covenant definitions or financial ratios or any component thereof or the waiver of any other covenant shall not constitute an increase of any Commitment of a Lender, a reduction or forgiveness in the interest rates or the fees or premiums or a postponement of any date scheduled for the payment of principal, premium, interest or fees or an extension of the final maturity of any Loan or the scheduled termination date of any Commitment, in each case for purposes of this clause (i), or (ii) consent to the assignment or transfer by the Borrower of its rights and obligations under any Credit Document to which it is a party (except as permitted pursuant to Section 10.3), in each case without the written consent of each Lender directly and adversely affected thereby, or (iii) amend, modify or waive any provision of this Agreement or any other Credit Document without the written consent of each Agent or the Escrow Agent in a manner that directly and adversely affects such Agent or the Escrow Agent, as applicable, or (iv) [reserved], or (v) [reserved], or (vi) [reserved], or (vii) release all or substantially all of the Guarantors under the Guarantees (except as expressly permitted by the Guarantees or this Agreement) or release all or substantially all of the Collateral under the Security Documents (except as expressly permitted by the Security Documents or this Agreement) without the prior written consent of each Lender, or (viii) [reserved], or (ix) reduce the percentages specified in the definitions of the terms Required Lenders or amend, modify or waive any provision of this Section 13.1 that has the effect of decreasing the number of Lenders that must approve any amendment, modification or waiver, without the written consent of each Lender or (y) notwithstanding anything to the contrary in clause (x), (i) extend the final expiration date of any Lender's Commitment or (ii) increase the aggregate amount of the Commitments of any Lender, in each case, without the written consent of such Lender.

(b) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except (x) that the Commitment of such Lender may not be increased or extended without the consent of such Lender, (y) for any such amendment, waiver or consent that treats such Defaulting Lender disproportionately from the other Lenders (other than because of its status as a Defaulting Lender), and (z) that the principal amount of any Loan owed to such Lender may not be decreased or reduced without the consent of such Lender.

(c) [Reserved].

(d) Any such waiver and any such amendment, supplement or modification shall apply equally to each of the affected Lenders and shall be binding upon the Parent, the Borrower, such Lenders, the Administrative Agent and all future holders of the affected Loans. In the case of any waiver, the Parent, the Borrower, the Lenders and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing, it being understood that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. In connection with the foregoing provisions, the Administrative Agent may, but shall have no obligations to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender.

(e) [Reserved].

(f) [Reserved].

(g) The Lenders hereby irrevocably agree that the Liens granted to the Collateral Agent by the Credit Parties on any Collateral shall be automatically released (i) in full, upon the termination of this Agreement and the payment of all Obligations hereunder (except for contingent indemnification obligations in respect of which a claim has not yet been made), (ii) upon the sale or other disposition of such Collateral (including as part of or in connection with any other sale or other disposition permitted hereunder) to any Person other than another Credit Party, to the extent such sale or other disposition is made in compliance with the terms of this Agreement, (iii) to the extent such Collateral is comprised of property leased to a Credit Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with this Section 13.1), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the applicable Guarantee (in accordance with the second following sentence), (vi) as required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Security Documents, and (vii) if such assets constitute Excluded Property. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Credit Parties in respect of) all interests retained by the Credit Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Credit Documents. Additionally, the Lenders hereby irrevocably agree that any Subsidiary that is a Guarantor shall be released from the Guarantees upon consummation of any transaction not prohibited hereunder resulting in such Subsidiary ceasing to constitute a Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender. Prior to taking any action or executing any document pursuant to this section, each of the Administrative Agent and the Collateral Agent shall be entitled to receive, and may conclusively rely upon without incurring liability therefor, an officer's certificate executed by officer of the Borrower certifying that such action and execution of such documents are authorized and permitted under this Agreement and any other Credit Document and all conditions precedent to such release or execution have been satisfied.

(h) Notwithstanding anything herein to the contrary, the Credit Documents may be amended to add syndication or documentation agents and make customary changes and references related thereto with the consent of only the Borrower and the Administrative Agent.

(i) Notwithstanding anything in this Agreement (including, without limitation, this Section 13.1) or any other Credit Document to the contrary, (i) [reserved]; (ii) [reserved]; (iii) any provision of this Agreement or any other Credit Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to (x) cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined by the Administrative Agent and the Borrower) and (y) effect administrative changes of a technical or immaterial nature and such amendment shall be deemed approved by the Lenders if the Lenders shall have received at least five Business Days' prior written notice of such change 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; and (iv) guarantees, collateral documents and related documents executed by Credit Parties in connection with this Agreement may be in a form reasonably determined by the Required Lenders (which approval may be communicated via email by any Specified Lender Advisor) and may be, together with any other Credit Document, entered into, amended, supplemented or waived, without the consent of any other Person, by the applicable Credit Party or Credit Parties and the Administrative Agent or the Collateral Agent (in each case acting at the Direction of the Required Lenders in their sole discretion), to (A) effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, (B) as required

by local law or advice of counsel to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with any applicable Requirement of Law, or (C) to cure ambiguities, omissions, mistakes or defects (as reasonably determined by the Administrative Agent, the Required Lenders and the Borrower) or to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Credit Documents.

(j) Notwithstanding anything in this Agreement or any Security Document to the contrary, the Required Lenders may, in their sole discretion, grant extensions of time for the satisfaction of any of the requirements under Sections 9.12, 9.13 and 9.14 or any Security Documents in respect of any particular Collateral or any particular Subsidiary if it determines that the satisfaction thereof with respect to such Collateral or such Subsidiary cannot be accomplished without undue expense or unreasonable effort or due to factors beyond the control of the Borrower and the other Credit Parties by the time or times at which it would otherwise be required to be satisfied under this Agreement or any Security Documents.

13.2 Notices. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Credit Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to the Parent, the Administrative Agent or the Collateral Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 13.2 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Parent, the Administrative Agent and the Collateral Agent.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, three Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail, when delivered; provided that notices and other communications to the Administrative Agent or the Lenders pursuant to Sections 2.3, 2.6, 2.9 and 5.1 shall not be effective until received.

13.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent, the Collateral Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Credit Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers, and privileges provided by law.

13.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Credit Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans hereunder.

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13.5 Payment of Expenses; Indemnification.

(a) The Borrower agrees to pay promptly following demand (and in any event as required by the DIP Order and/or the Canadian DIP Recognition Order), without the requirement of prior Bankruptcy Court approval and whether incurred before or after the Petition Date, all reasonable and documented out-of-pocket legal, accounting, appraisal, consulting, financial advisory and other fees, costs and expenses (including, without limitation, in respect of the Specified Lender Advisors, the Crossholder Lender Advisors, the Lender Advisors and the Agent Advisors) incurred by the Agents, the Ad Hoc Group of Lenders, the Ad Hoc Group of Crossholder Lenders and their respective Affiliates in connection with the negotiation, preparation and administration of the Credit Documents, the Interim Order, the Final Order, the Canadian DIP Recognition Order or incurred in connection with:

(i) amendment, modification or waiver of, consent with respect to, or termination of, any of the Credit Documents or advice in connection with the syndication and administration of the Loans made pursuant hereto, including any Withdrawal, or its rights hereunder or thereunder

(ii) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the Agents, any Lender, the Borrower or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Credit Documents, the Pre-Petition Credit Documents, or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case or proceeding commenced by or against any Credit Party or any other Person that may be obligated to the Agents or the Lenders by virtue of the Credit Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loans during the pendency of one or more Events of Default; provided that no Person shall be entitled to reimbursement under this clause (ii) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's gross negligence or willful misconduct (as determined by a final non-appealable judgment of a court of competent jurisdiction);

(iii) any attempt to enforce or prosecute any rights or remedies of the Agents or any Lender against any or all of the Credit Parties or any other Person that may be obligated to the Agents or any Lender by virtue of any of the Credit Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Loans prior to or during the pendency of one or more Events of Default;

(iv) any work-out or restructuring of the Obligations prior to or during the pendency of one or more Events of Default;

(v) [reserved];

(vi) the obtaining of approval of the Credit Documents by the Bankruptcy Court or any other court;

(vii) the preparation and review of pleadings, documents, orders and reports related to the Chapter 11 Cases, the Canadian Recognition Proceeding and any Successor Cases, attendance at meetings, court hearings or conferences related to the Chapter 11 Cases, the Canadian Recognition Proceeding and any Successor Cases, and general monitoring of the Chapter 11 Cases, the Canadian Recognition Proceeding and any Successor Cases and any action, arbitration or other proceeding (whether instituted by or against the Agents, any Lender, any Credit Party, any representative of creditors of an Credit Party or any other Person) in any way relating to any

Collateral (including the validity, perfection, priority or avoidability of the Liens with respect to any Collateral), the Pre-Petition Credit Documents, Credit Documents or the Obligations, including any lender liability or other claims;

(viii) efforts to (1) monitor the Loans or any of the other Obligations, (2) evaluate, observe or assess any of the Credit Parties or their respective affairs, (3) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral or (4) settle or otherwise satisfy any charges or Liens with respect to any Collateral;

(ix) any lien searches or request for information listing financing statements or liens filed or searches conducted to confirm receipt and due filing of financing statements and security interests in all or a portion of the Collateral; and

(x) including, as to each of clauses (i) through (ix) above, all reasonable and documented professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all reasonable and documented out-of-pocket expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this Section 13.5, all of which shall be payable by Borrower to the Agents or the Lenders, as applicable.

Without limiting the generality of the foregoing, such reasonable expenses, costs, charges and fees may include: reasonable and documented out-of-pocket fees, costs and expenses of accountants, sales consultants, financial advisors, the Agent Advisors, any Specified Lender Advisors, any Lender Advisor, environmental advisors, appraisers, investment bankers, management and other consultants; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; air express charges, and reasonable expenses for travel, lodging and food paid or incurred in connection with the performance of such legal, professional or other advisory services; provided that, notwithstanding anything to the contrary contained in this Section 13.5(a) or in any other Credit Document, each Credit Party reaffirms its obligation to pay the fees as set forth in the Financial Advisor Engagement Letters.

(b) The Borrower (on behalf of itself and the other Credit Parties) agrees to pay, indemnify and hold harmless each Lender, each Agent and their respective Related Parties (without duplication) (the "Indemnified Persons") from and against any and all losses, claims, damages, liabilities, obligations, demands, actions, judgments, suits, costs, expenses, disbursements or penalties of any kind or nature whatsoever (and the reasonable and documented fees, expenses, disbursements and other charges of any Specified Lender Advisors, any Lender Advisors and the Agent Advisors owed pursuant to Section 13.5(a)) of any such Indemnified Person arising out of or relating to any action, claim, litigation, investigation or other proceeding (regardless of whether such Indemnified Person is a party thereto), arising out of any Commitment, Loan or the use or proposed use of the proceeds therefrom, arising out of, or with respect to the Transactions or to the execution, delivery, performance, administration and enforcement of this Agreement, the other Credit Documents and any such other documents, agreements, letters or instruments delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, including any of the foregoing relating to the violation of, noncompliance with or liability under, any Environmental Law or any actual or alleged presence, Release or threatened Release of Hazardous Materials attributable to any Credit Party or any of its Subsidiaries (all the foregoing in this clause (iii), regardless of whether brought by any Credit Party, any of its subsidiaries or any other Person collectively, the "Indemnified Liabilities"); provided that the Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from (i) the gross negligence, bad faith or willful misconduct of such Indemnified Person or any of its Related Parties as determined in a final and non-appealable judgment of a court of competent jurisdiction, (ii) a material

breach of the obligations of such Indemnified Person (other than with respect to each Agent) or any of its Related Parties under the terms of this Agreement by such Indemnified Person or any of its Related Parties as determined in a final and non-appealable judgment of a court of competent jurisdiction, or (iii) any proceeding between and among Indemnified Persons that does not involve an act or omission by any Credit Party or any of their respective Subsidiaries; provided the Agents, to the extent acting in their capacity as such, shall remain indemnified in respect of such proceeding, to the extent that the exception set forth in the immediately preceding clause (i) of the immediately preceding proviso does not apply to such Agent at such time. The agreements in this Section 13.5 shall survive repayment of the Loans and all other amounts payable hereunder. This Section 13.5 shall not apply with respect to Taxes, other than any Taxes that represent losses, claims, damages, liabilities, obligations, penalties, actions, judgments, suits, costs, expenses or disbursements arising from any non-Tax claim.

(c) Each Indemnified Person agrees (x) that the Borrower shall have no obligation to reimburse such Indemnified Person for fees and expenses and (y) to return and refund any and all amounts paid by the Borrower pursuant to this Section 13.5, in the case of each of clauses (x) and (y), to the extent such Indemnified Person is not entitled to payment of such amounts in accordance with the terms of the Credit Documentation.

(d) No Credit Party or Indemnified Person (or any Related Party of an Indemnified Person) shall have any liability for any special, punitive, indirect or consequential damages resulting from this Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date); provided that the foregoing shall not limit the Borrower's indemnification obligations to the Indemnified Persons pursuant to Section 13.5(a) or under any other provision of this Agreement or any of the other Credit Agreement Documents. No Indemnified Person (or any Related Party of an Indemnified Person) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby, except to the extent that such damages have resulted from the willful misconduct, bad faith or gross negligence of any Indemnified Person or any of its Related Parties as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) All amounts reimbursable by the Borrower under this Section 13.5 shall constitute Obligations secured by the Collateral. The agreements in this Section 13.5 shall survive the termination of the Commitments and repayment of all other Obligations. All amounts due under this Section 13.5 shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto. If the Borrower fail to pay when due any amounts payable by it hereunder or under any Credit Document, such amount may be paid on behalf of the Borrower by the Administrative Agent in its discretion by charging any loan account(s) of the Borrower, without notice to or consent from the Borrower, and any amounts so paid shall constitute Obligations hereunder.

### 13.6 Successors and Assigns; Participations and Assignments.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) except as expressly permitted by Section 10.3, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 13.6. 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 clause (c) of this Section 13.6) and, to the extent expressly contemplated hereby,

the Related Parties of each of the Administrative Agent, the Collateral Agent and the Lenders and each other Person entitled to indemnification under Section 13.5) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below and Section 13.7, any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of

- (A) the Parent; provided that no consent of the Borrower shall be required for (1) an assignment Loans or Commitments of to a Lender, an Affiliate of a Lender, or an Approved Fund or (2) an assignment of Loans or Commitments to any assignee if an Event of Default has occurred and is continuing or (3) so long as made in accordance with the RSA; and
- (B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of any Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

The Parent's consent shall be deemed to have been given if the Borrower has not responded within four Business Days after having received notice thereof. Notwithstanding the foregoing, no such assignment shall be made to a natural Person.

(ii) Assignments shall be subject to the following additional conditions:

- (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 in the case of Term Loans (and shall, in each case be in an integral multiple thereof), unless each of the Borrower and the Administrative Agent otherwise consents (which consents shall not be unreasonably withheld, delayed or conditioned) or, if less, the assignment constitutes all of the applicable Lender's Term Loans; provided that no such consent of the Borrower shall be required if an Event of Default under Section 11.1(a) has occurred and is continuing; provided, further, that contemporaneous assignments by a Lender and its Affiliates or Approved Funds shall be aggregated for purposes of meeting the minimum assignment amount requirements stated above (and simultaneous assignments to or by two or more Related Funds shall be treated as one assignment), if any;
- (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of the Term Loans;
- (C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic

settlement system or other method reasonably acceptable to the Administrative Agent, together with a processing and recordation fee in the amount of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment;

- (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in a form approved by the Administrative Agent (the "**Administrative Questionnaire**") and applicable tax forms (as required under Section 5.4(e)); and
- (E) any assignment to an Affiliated Lender (other than an Affiliated Institutional Lender) shall also be subject to the requirements of Section 13.6(h); and
- (F) such assignment shall be permitted by, and in accordance with, the RSA.

For the avoidance of doubt, the Administrative Agent bears no responsibility for tracking or monitoring assignments to or participations by any Affiliated Lender.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(v) of this Section 13.6, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and the other Credit Documents, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.10, 2.11, 3.5, 5.4 and 13.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.6 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 clause (c) of this Section 13.6. For the avoidance of doubt, in case of an assignment to a new Lender pursuant to this Section 13.6, (i) the Administrative Agent, the new Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the new Lender been an original Lender signatory to this Agreement with the rights and/or obligations acquired or assumed by it as a result of the assignment and to the extent of the assignment the assigning Lender shall each be released from further obligations under the Credit Documents and (ii) the benefit of each Security Document shall be maintained in favor of the new Lender.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans (and stated interest amounts) owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Collateral Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Collateral Agent, the Administrative Agent and its Affiliates and, with respect to itself, any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent solely for purposes of maintaining the Register as provided in this Section 13.6(b)(iv). This Section 13.6(b)(iv) shall

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be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury Regulations (or any other relevant or successor provisions of the Code or of such Treasury Regulations).

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and applicable tax forms (as required under Section 5.4(e) unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b) of this Section 13.6 and any written consent to such assignment required by clause (b) of this Section 13.6, the Administrative Agent shall promptly accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (b)(v).

(c) (i) Any Lender may, without the consent of, or notice to the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (other than (x) a natural person, (y) any Credit Party or any of their Subsidiaries and (z) [reserved] (each, a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clauses (i) and (vii) of the third proviso to Section 13.1 that affects such Participant. Subject to clause (c)(ii) of this Section 13.6, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.10, 2.11, 3.5, and 5.4 to the same extent as if it were a Lender (subject to the limitations and requirements of those Sections as though it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 13.6, including the requirements of clause (e) of Section 5.4 (it being agreed that any documentation required under Section 5.4(e) shall be provided to the participating Lender)). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.9(b) as though it were a Lender; provided such Participant shall be subject to Section 13.9(a) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.10, 2.11, 3.5 or 5.4 than the applicable Lender would have been entitled to receive absent the sale of such the participation sold to such Participant, except to the extent such entitlement to a greater payment results from a Change in Law after the sale of the participations takes place. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest amounts) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"). 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. No Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (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 Credit Document) except to the extent that such disclosure is necessary in connection with a tax audit or other proceeding to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(d) Any Lender may, without the consent of, or notice to, the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, or other central bank having jurisdiction over such Lender, and this Section 13.6 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Subject to Section 13.16, the Borrower authorizes each Lender to disclose to any Participant, secured creditor of such Lender or assignee (each, a "Transferee") and any prospective Transferee any and all financial information in such Lender's possession concerning the Borrower and its Affiliates that has been delivered to such Lender by or on behalf of the Borrower and its Affiliates pursuant to this Agreement or that has been delivered to such Lender by or on behalf of the Borrower and its Affiliates in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

(f) The words "execution," "signed," "signature," and words of like import in any Assignment and Acceptance shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPV"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPV to make any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it shall not institute against, or join any other Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 13.6, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Loans and (ii) subject to Section 13.16, disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV. This Section 13.6(g) may not be amended without the written consent of the SPV. Notwithstanding anything to the contrary in this Agreement but subject to the following sentence, each SPV shall be entitled to the benefits of Sections 2.10, 2.11, 3.5 and 5.4 to the same extent as if it were a Lender (subject to the limitations and requirements of those Sections as though it were a Lender

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and had acquired its interest by assignment pursuant to clause (b) of this Section 13.6, including the requirements of clause (e) of Section 5.4 (it being agreed that any documentation required under Section 5.4(e) shall be provided to the Granting Lender)). Notwithstanding the prior sentence, an SPV shall not be entitled to receive any greater payment under Section 2.10, 2.11, 3.5 or 5.4 than its Granting Lender would have been entitled to receive absent the grant to such SPV, unless such grant to such SPV is made with the Borrower's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned).

(h) Notwithstanding anything to the contrary contained herein (and so long as no Event of Default is then continuing), (x) any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to an Affiliated Lender; provided that:

(i) [reserved];

(ii) by its acquisition of Loans or Commitments, an Affiliated Lender shall be deemed to have acknowledged and agreed that:

(A) it shall not have any right to (I) attend or participate in (including, in each case, by telephone) any meeting (including "Lender only" meetings) or discussions (or portion thereof) among the Administrative Agent or any Lender at which representatives of the Borrower are not then present, (II) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among the Administrative Agent and one or more Lenders or any other material which is "Lender only", except to the extent such information or materials have been made available to the Borrower or its representatives (and in any case, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans required to be delivered to Lenders pursuant to Section 2) or receive any advice of counsel to the Administrative Agent or (III) make any challenge to the Administrative Agent's or any other Lender's attorney-client privilege on the basis of its status as a Lender; and

(B) except with respect to any amendment, modification, waiver, consent or other action (I) in Section 13.1 requiring the consent of all Lenders, all Lenders directly and adversely affected or specifically such Lender, (II) that alters an Affiliated Lender's pro rata share of any payments given to all Lenders, or (III) affects the Affiliated Lender (in its capacity as a Lender) in a manner that is disproportionate to the effect on any Lender, the Loans held by an Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of any Lender vote (and, in the case of a plan of reorganization that does not affect the Affiliated Lender in a manner that is materially adverse to such Affiliated Lender relative to other Lenders, shall be deemed to have voted its interest in the Term Loans in the same proportion as the other Lenders) (and shall be deemed to have been voted in the same percentage as all other applicable Lenders voted if necessary to give legal effect to this paragraph); and

(iii) the aggregate principal amount of Term Loans held at any one time by Affiliated Lenders may not exceed 25% of the aggregate principal amount of all Term Loans outstanding at the time of such purchase.

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For avoidance of doubt, the foregoing limitations shall not be applicable to Affiliated Institutional Lenders. None of the Borrower, the Parent, any other Subsidiary of the Parent or any Affiliated Lender shall be required to make any representation that it is not in possession of information which is not publicly available and/or material with respect to the Parent, the Borrower and their respective Subsidiaries or their respective securities for purposes of U.S. federal and state securities laws and all parties to the relevant transactions shall render customary "big boy" disclaimer letters.

(i) Notwithstanding anything to the contrary contained herein, the Lenders hereto on the Funding Date may assign all or a portion of its rights and obligations under this Agreement in respect of the Term Loans on the Funding Date to an Affiliated Lender or any Pre-Petition Lender (or any Affiliated Lender thereof) in connection with the syndication of the Term Loans contemplated in the RSA.

13.7 [Reserved]

13.8 Replacement of Lenders Under Certain Circumstances.

(a) The Borrower, at its cost and expense (which, for the avoidance of doubt, may be shared with the replacement institution with such institution's consent), shall be permitted to replace any Lender, and in the case of a Lender repay all Obligations of the Borrower due and owing to such Lender relating to the Loans that (a) requests reimbursement for amounts owing pursuant to Sections 2.10 or 5.4, (b) is affected in the manner described in Section 2.10(a)(iii) and as a result thereof any of the actions described in such Section is required to be taken, or (c) becomes a Defaulting Lender, with a replacement bank or other financial institution; provided that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default under Section 11.1 shall have occurred and be continuing at the time of such replacement, (iii) the Borrower shall repay (or the replacement bank or institution shall purchase, at par) all Loans and other amounts pursuant to Sections 2.10, 2.11, 5.4 or 13.5, as the case may be, owing to such replaced Lender prior to the date of replacement, (iv) the replacement bank or institution, if not already a Lender, an Affiliate of the Lender, an Affiliated Lender or Approved Fund, and the terms and conditions of such replacement, shall be satisfactory to the Required Lenders, (v) the replacement bank or institution, if not already a Lender shall be subject to the provisions of Section 13.6(a), (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 13.6 (provided that unless otherwise agreed the Borrower shall be obligated to pay the registration and processing fee referred to therein), and (vii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, any Agent, the Escrow Agent or any other Lender shall have against the replaced Lender. Notwithstanding anything herein to the contrary, each party hereto agrees that any assignment pursuant to the terms of this Section 13.7 may be effected pursuant to an Assignment and Acceptance executed by the Borrower, the Administrative Agent and the assignee and that the Lender making such assignment need not be a party thereto.

13.9 Adjustments; Set-off. Subject to Section 12.13, the Carve Out and the CCAA Administration Charge,

(a) Except as contemplated in Section 13.6 or elsewhere herein, if any Lender (a "Benefited Lender") shall at any time receive any payment of all or part of its Loans, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 11.1(e), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Loans, or interest thereon, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Loan, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders;

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provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Subject to the DIP Order, after the occurrence and during the continuance of an Event of Default, in addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Credit Parties, any such notice being expressly waived by the Credit Parties to the extent permitted by applicable law, upon any amount becoming due and payable by the Credit Parties hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final) (other than payroll, trust, tax, fiduciary, and petty cash accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Credit Parties. Each Lender agrees promptly to notify the Credit Parties and the Administrative Agent after any such set-off and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

13.10 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

13.11 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13.12 Integration. This Agreement and the other Credit Documents represent the agreement of the Borrower, the other Credit Parties, the Agents, the Escrow Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Borrower, the other Credit Parties, any Agent, the Escrow Agent nor any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents. To the extent there are any inconsistencies between the terms of this Agreement or any Credit Document and the DIP Order, the provisions of the DIP Order shall govern.

13.13 GOVERNING LAW; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT THE LAW OF THE STATE OF NEW YORK IS SUPERSEDED BY THE BANKRUPTCY CODE.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, IN THE COURTS OF THE STATE OF NEW YORK AND THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE LOCATED IN NEW YORK COUNTY, AND APPELLATE COURTS FROM ANY THEREOF, AND, BY

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EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HERETO HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF SUCH COURTS. EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADMINISTRATIVE AGENT AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY OTHER PARTY IN ANY OTHER JURISDICTION. EACH OF THE PARTIES HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS.

13.14 Acknowledgments. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution, and delivery of this Agreement and the other Credit Documents;

(b) (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document) are an arm's-length commercial transaction between the Borrower and the other Credit Parties, on the one hand, and the Administrative Agent, the Lenders, the other Agents and the Escrow Agent on the other hand, and the Borrower and the other Credit Parties are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents (including any amendment, waiver or other modification hereof or thereof);

(i) in connection with the process leading to such transaction, each of the Administrative Agent, the other Agents and the Escrow Agent, is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary for the Borrower, any other Credit Parties or any of their respective Affiliates, stockholders, creditors or employees, or any other Person;

(ii) neither the Administrative Agent, any other Agent, the Escrow Agent nor any Lender has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or any other Credit Party with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Credit Document (irrespective of whether the Administrative Agent, other Agents, the Escrow Agent or any Lender has advised or is currently advising the Borrower, the

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other Credit Parties or their respective Affiliates on other matters) and neither the Administrative Agent, other Agents, the Escrow Agent nor any Lender has any obligation to the Borrower, the other Credit Parties or their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents;

(iii) the Administrative Agent, each other Agent, the Escrow Agent, each Lender and each Affiliate of the foregoing may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and their Affiliates, and neither the Administrative Agent, any other Agent, the Escrow Agent nor any Lender has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and

(iv) neither the Administrative Agent, any other Agent, the Escrow Agent any Lender nor any of their respective Affiliates has provided and none will provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Credit Document) and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. The Borrower hereby agrees (on behalf of itself and the other Credit Parties) that it will not claim that any Agent or the Escrow Agent owes a fiduciary or similar duty to the Credit Parties in connection with the Transactions contemplated hereby and waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent, any other Agent, the Escrow Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty; and

(c) no joint venture is created hereby or by the other Credit Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower, on the one hand, and any Lender, on the other hand.

**13.15 WAIVERS OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE (TO THE EXTENT PERMITTED BY APPLICABLE LAW) TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

**13.16 Confidentiality.** The Administrative Agent, each other Agent and each Lender (collectively, the "**Restricted Persons**" and, each a "**Restricted Person**") shall treat confidentially all non-public information provided to any Restricted Person by or on behalf of any Credit Party hereunder with respect to such Credit Party or any of its Subsidiaries and their businesses in connection with such Restricted Person's evaluation of whether to become a Lender hereunder or obtained by such Restricted Person pursuant to the requirements of this Agreement ("**Confidential Information**") and shall not publish, disclose or otherwise divulge such Confidential Information; provided that nothing herein shall prevent any Restricted Person from disclosing any such Confidential Information (a) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable law, rule or regulation or compulsory legal process (in which case such Restricted Person agrees (except with respect to any routine or ordinary course audit or examination conducted by bank accountants or any governmental or bank regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, rule or regulation, to inform the Borrower promptly thereof prior to disclosure), (b) upon the request or demand of any regulatory authority having jurisdiction over such Restricted Person or any of its Affiliates (in which case such Restricted Person agrees (except with respect to any routine or ordinary course audit or examination conducted by bank accountants or any governmental or bank regulatory authority exercising examination or regulatory authority) to the extent practicable and not prohibited by applicable law, rule or regulation, to inform the Borrower promptly thereof prior to disclosure), (c) to the extent that such Confidential Information becomes

publicly available other than by reason of improper disclosure by such Restricted Person or any of its affiliates or any related parties thereto in violation of any confidentiality obligations owing under this Section 13.16, (d) to the extent that such Confidential Information is received by such Restricted Person from a third party that is not, to such Restricted Person's knowledge, subject to confidentiality obligations owing to any Credit Party or any of their respective subsidiaries or affiliates, (e) to the extent that such Confidential Information was already in the possession of the Restricted Persons prior to any duty or other undertaking of confidentiality or is independently developed by the Restricted Persons without the use of such Confidential Information, (f) to such Restricted Person's affiliates and to its and their respective officers, directors, partners, employees, legal counsel, independent auditors, and other experts or agents who need to know such Confidential Information in connection with providing the Loans or action as an Agent hereunder and who are informed of the confidential nature of such Confidential Information and who are subject to customary confidentiality obligations of professional practice or who agree to be bound by the terms of this Section 13.16 (or confidentiality provisions at least as restrictive as those set forth in this Section 13.16) (with each such Restricted Person, to the extent within its control, responsible for such person's compliance with this paragraph), (g) to potential or prospective Lenders, hedge providers, participants or assignees, in each case who agree (pursuant to customary syndication practice) to be bound by the terms of this Section 13.16 (or confidentiality provisions at least as restrictive as those set forth in this Section 13.16); provided that (i) the disclosure of any such Confidential Information to any Lenders, hedge providers or prospective Lenders, hedge providers or participants or prospective participants referred to above shall be made subject to the acknowledgment and acceptance by such Lender, hedge provider or prospective Lender or participant or prospective participant that such Confidential Information is being disseminated on a confidential basis (on substantially the terms set forth in this Section 13.16 or confidentiality provisions at least as restrictive as those set forth in this Section 13.16) in accordance with the standard syndication processes of such Restricted Person or customary market standards for dissemination of such type of information, which shall in any event require "click through" or other affirmative actions on the part of recipient to access such Confidential Information and (ii) [reserved], (h) for purposes of establishing a "due diligence" defense, or (i) to rating agencies in connection with obtaining ratings for the Borrower and the DIP Facility to the extent such rating agencies are subject to customary confidentiality obligations of professional practice or agree to be bound by the terms of this Section 13.16 (or confidentiality provisions at least as restrictive as those set forth in this Section 13.16). Notwithstanding the foregoing, (i) Confidential Information shall not include, with respect to any Person, information available to it or its Affiliates on a non-confidential basis from a source other than the Parent, its Subsidiaries or their respective Affiliates, (ii) the Administrative Agent shall not be responsible for compliance with this Section 13.16 by any other Restricted Person (other than its officers, directors or employees), (iii) in no event shall any Lender, the Administrative Agent or any other Agent be obligated or required to return any materials furnished by the Parent or any of its Subsidiaries, and (iv) each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the other Credit Documents.

**13.17 Direct Website Communications.** Each of the Parent and the Borrower may, at their option, provide to the Administrative Agent any information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Credit Documents, including, without limitation, all notices, requests, financial statements, financial, and other reports, certificates, and other information materials, but excluding any such communication that (A) relates to a request for a new, or a conversion of an existing, borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (B) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (C) provides notice of any default or event of default under this Agreement or (D) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit thereunder (all such non-excluded

communications being referred to herein collectively as “Communications”), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent to the Administrative Agent at an email address provided by the Administrative Agent from time to time; provided that (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Nothing in this Section 13.17 shall prejudice the right of the Credit Parties, the Administrative Agent, any other Agent, the Escrow Agent or any Lender to give any notice or other communication pursuant to any Credit Document in any other manner specified in such Credit Document.

The Agents agree that the receipt of the Communications by any Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to such Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees (A) to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender’s e-mail address to which the foregoing notice may be sent by electronic transmission and (B) that the foregoing notice may be sent to such e-mail address.

(a) The Borrower further agrees that any Agent may make the Communications available to the Lenders by posting the Communications on Intralinks or a substantially similar electronic transmission system (the “Platform”), so long as the access to such Platform (i) is limited to the Agents, the Lenders and Transferees or prospective Transferees and (ii) remains subject to the confidentiality requirements set forth in Section 13.16.

(b) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY MATERIALS OR INFORMATION PROVIDED BY THE CREDIT PARTIES (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 any Agent or any of its Related Parties (collectively, the “Agent Parties” and each an “Agent Party”) have any liability to the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities, or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or such Agent’s transmission of Borrower Materials through the internet, except to the extent the liability of any Agent Party resulted from such Agent Party’s (or any of its Related Parties’ (other than any trustee or advisor)) gross negligence, bad faith or willful misconduct as determined in the final non-appealable judgment of a court of competent jurisdiction.

(c) The Borrower and each Lender acknowledge that certain of the Lenders may be “public-side” Lenders (Lenders that do not wish to receive material non-public information with respect to the Parent, the Borrower, the Subsidiaries or their securities) and, if documents or notices required to be delivered pursuant to the Credit Documents or otherwise are being distributed through the Platform, any document or notice that the Borrower has indicated contains only publicly available information with

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respect to the Borrower may be posted on that portion of the Platform designated for such public-side Lenders. If the Borrower has not indicated whether a document or notice delivered contains only publicly available information, the Administrative Agent shall post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to the Credit Parties and their securities. Notwithstanding the foregoing, the Borrower shall use commercially reasonable efforts to indicate whether any document or notice contains only publicly available information; provided, however, that, the following documents shall be deemed to be marked "PUBLIC," unless the Borrower notifies the Administrative Agent promptly that any such document contains material nonpublic information: (1) the Credit Documents, (2) any notification of changes in the terms of the DIP Facility and (3) all financial statements and certificates delivered pursuant to Sections 9.1(b) and (d).

13.18 USA PATRIOT Act. Each Agent, the Escrow Agent and each Lender hereby notifies each Credit Party that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify, and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Agent, the Escrow Agent and such Lender to identify each Credit Party in accordance with the Patriot Act.

13.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Credit Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with its normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Credit Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with its normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate joint and several obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

13.20 Payments Set Aside. To the extent that any payment by or on behalf of the Parent or the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver, receiver and manager or any other party, in connection with any proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

13.21 No Fiduciary Duty. Each Agent, the Escrow Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that

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conflict with those of the Credit Parties, their stockholders and/or their affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its stockholders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders or creditors. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

13.22 Canadian Anti-Money Laundering. The Borrower acknowledges that, pursuant to AML Legislation, the Agents, the Escrow Agent and the Lenders may be required to obtain, verify and record information regarding the Borrower, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrower, and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any of the Agents, the Escrow Agent or the Lenders, or any prospective assignee or participant of any of the Agents, the Escrow Agent or the Lenders, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If any of the Agents or the Escrow Agent has ascertained the identity of the Borrower or any authorized signatories of the Borrower for the purposes of applicable AML Legislation, then such Agent or the Escrow Agent, as applicable:

- (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and such Agent within the meaning of applicable AML Legislation; and
- (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that none of the Agents nor the Escrow Agent has any obligation to ascertain the identity of the Borrower or any authorized signatories of the Borrower on behalf of any Lender, nor to confirm the completeness or accuracy of any information any of the Agents or the Escrow Agent obtains from the Borrower or any such authorized signatory in doing so.

13.23 [Reserved].

13.24 Acknowledgement and Consent to Bail-In of any Affected Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Bank



that is an Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of a 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 a Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Bank 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 Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any Resolution Authority.

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IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

POINTWELL LIMITED,  
as the Parent

By:

\_\_\_\_\_  
Name:  
Title:

SKILLSOFT CORPORATION,  
as the Borrower

By:

\_\_\_\_\_  
Name:  
Title:

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WILMINGTON SAVINGS FUND SOCIETY, FSB,  
as Administrative Agent, Escrow Agent and Collateral  
Agent

By:

---

Name:

Title:

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\_\_\_\_\_  
as Lender

By:

\_\_\_\_\_  
Name:  
Title:

JP

**Schedule "L"**

*Order (I) Scheduling Combined Hearing to Consider (A) Approval of Solicitation Procedures and Forms of Ballots, and (C) Confirmation of Prepackaged Plan; (II) Establishing an Objection Deadline to Object to Disclosure Statement and Plan; (III) Approving the Form and Manner of Notice of Combined Hearing, Objection Deadline, and Notice of Commencement; (IV) Conditionally Waiving Requirement of Filing Statement of Financial Affairs and Schedules of Assets and Liabilities; (V) Approving Notice and Objection Procedures for the Assumption or Rejection of Executory Contracts and Unexpired Leases; (VI) Conditionally Waiving Requirement to Convene the Section 341 Meeting of Creditors; and (VII) Granting Related Relief Pursuant to Sections 105(a), 341, 521(a), 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 1007, 2002, 3017, and 3018*

(See attached)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

----- X	
In re:	: : : Chapter 11
SKILLSOFT CORPORATION, <i>et al.</i>	: : Case No. 20-11532 (MFW)
Debtors. <sup>1</sup>	: : (Jointly Administered)
	: : Re: D.I. 13
----- X	

**ORDER (I) SCHEDULING COMBINED HEARING TO CONSIDER (A) APPROVAL OF DISCLOSURE STATEMENT, (B) APPROVAL OF SOLICITATION PROCEDURES AND FORMS OF BALLOTS, AND (C) CONFIRMATION OF PREPACKAGED PLAN; (II) ESTABLISHING AN OBJECTION DEADLINE TO OBJECT TO DISCLOSURE STATEMENT AND PLAN; (III) APPROVING THE FORM AND MANNER OF NOTICE OF COMBINED HEARING, OBJECTION DEADLINE, AND NOTICE OF COMMENCEMENT; (IV) CONDITIONALLY WAIVING REQUIREMENT OF FILING STATEMENT OF FINANCIAL AFFAIRS AND SCHEDULES OF ASSETS AND LIABILITIES; (V) APPROVING NOTICE AND OBJECTION PROCEDURES FOR THE ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (VI) CONDITIONALLY WAIVING REQUIREMENT TO CONVENE THE SECTION 341 MEETING OF CREDITORS; AND (VII) GRANTING RELATED RELIEF PURSUANT TO SECTIONS 105(a), 341, 521(a), 1125, 1126, AND 1128 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 1007, 2002, 3017, AND 3018**

Upon the motion (the "Motion")<sup>2</sup> of Skillsoft Corporation ("Skillsoft") and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SunTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors' corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

*JPS*



(collectively, the “Debtors”), for entry of an order (i) scheduling a combined hearing (the “**Combined Hearing**”) to consider (a) approval of the Disclosure Statement and (b) confirmation of the Prepackaged Plan; (ii) establishing an objection deadline to object to the adequacy of the Disclosure Statement or confirmation of the Prepackaged Plan; (iii) approving the Solicitation Procedures; (iv) approving the form and manner of the notice of the Combined Hearing, the Objection Deadline, and notice of commencement; (v) approving the notice and objection procedures in connection with the assumption or rejection of executory contracts and unexpired leases pursuant to the Prepackaged Plan; (vi) extending the deadline for the Debtors to file schedules of assets and liabilities and statements of financial affairs (collectively, the “**Schedules and Statements**”) through and including August 7, 2020 (the “**SOAL/SOFA Deadline**”), and conditionally waiving the requirement that the Debtors file the Schedules and Statements if confirmation of the Prepackaged Plan is obtained; (vii) conditionally waiving the requirement to convene the Section 341 Meeting; and (viii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and

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it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted to the extent set forth herein.
2. The confirmation schedule set forth in the Motion is hereby approved, except as may be modified below.
3. A hearing to consider compliance with disclosure and solicitation requirements and confirmation of the Debtors' Prepackaged Plan (the "**Combined Hearing**") is hereby scheduled to be held before this Court on July 24, 2020 at 10:30 a.m. (prevailing Eastern Time). The Combined Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court or at the Combined Hearing and notice of such adjourned date(s) will be available on the electronic case filing docket.
4. Objections to the Disclosure Statement and/or the Prepackaged Plan shall be: (i) in writing; (ii) filed with the Clerk of Court together with proof of service thereof; (iii) set forth the name of the objecting party, and the nature and amount of any claim or interest asserted by the objecting party against the estate or property of the Debtors, and (iv) state the legal and factual basis for such objection; and (v) conform to the applicable Bankruptcy Rules and the Local Rules, by no later than **4:00 p.m. (prevailing Eastern Time) on July 17, 2020** (the "**Objection Deadline**"). In addition to being filed with the Clerk of the Court, any such Objections should be served upon the following parties in accordance with the Local Rules:
  - i. Skillsoft Corporation, 300 Innovative Way, Suite 201, Nashua, NH 03062 (Attn: Greg Porto, Chief People Officer (Greg.Porto@skillsoft.com));

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- ii. proposed counsel to the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (Gary.Holtzer@weil.com), Robert J. Lemons, Esq. (Robert.Lemons@weil.com), and Katherine Theresa Lewis, Esq. (Katherine.Lewis@weil.com)) and Richard, Layton & Finger, P.A. One Rodney Square, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com), Amanda R. Steele, Esq. (steele@rlf.com) and Chris De Lillo, Esq. (delillo@rlf.com));
  - iii. counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina Brown, Esq. (Christina.brown@gibsondunn.com));
  - iv. counsel to the Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com));
  - v. counsel to Wilmington Savings Fund Society, FSB, in its capacity as First Lien Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Gregg S. Bateman, Esq. (bateman@sewkis.com));
  - vi. counsel to Wilmington Savings Fund Society, FSB, in its capacity as Second Lien Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Gregg S. Bateman, Esq. (bateman@sewkis.com));
  - vii. counsel to Wilmington Savings Fund Society, FSB, in its capacity as DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Gregg S. Bateman, Esq. (bateman@sewkis.com));
  - viii. Counsel to the AR Facility Agent, Holland & Knight, 200 Crescent Court, Suite 1600, Dallas, Texas 75201 (Attn: Samuel Pinkston, Esq. (Samuel.Pinkston@hkclaw.com)); and
  - ix. the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 N King St., Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy, Esq.).
5. Any objection not timely filed and served in the manner set forth in this

Order may, in the Court's discretion, not be considered and may be overruled.

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6. Notice of the Combined Hearing as proposed in the Motion and the form of notice annexed hereto as Exhibit 1 shall be deemed good and sufficient notice of the Combined Hearing and no further notice need be given; *provided, however*, that any provision of Bankruptcy Rule 3017(d) requiring the Debtors to distribute the Disclosure Statement and the Prepackaged Plan to parties not entitled to vote, whether because they are unimpaired or because they are deemed to reject the Prepackaged Plan, or any parties in interest other than as prescribed in this Order, shall be waived; *provided further, however*, the Disclosure Statement and Prepackaged Plan shall remain posted in PDF format to the following page at [www.kccllc.net/skillsoft](http://www.kccllc.net/skillsoft) and shall be provided in either electronic or paper form to any parties in interest upon written request to the Debtors. The Debtors shall also serve a copy of the Combined Notice on all known creditors, interest holders, and interested parties.

7. Service of the Combined Notice as set forth in the Motion and herein is sufficient notice of the Petition Date, the Combined Hearing, the Objection Deadline, the procedures for objecting to the adequacy of the Disclosure Statement and to confirmation of the Prepackaged Plan, and the procedures for objecting to the Debtors' assumption or rejection of executory contracts and unexpired leases pursuant to the Prepackaged Plan.

8. To the extent that section 1125(b) of the Bankruptcy Code requires the Debtors' prepetition solicitation of acceptances for the Prepackaged Plan to be pursuant to an approved disclosure statement in order to continue on a postpetition basis, the Court conditionally approves the Disclosure Statement having adequate information as required by section 1125 of the Bankruptcy Code without prejudice to any party in interest objecting to the Disclosure Statement at the Combined Hearing.

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9. The Debtors, in their discretion, are authorized pursuant to Bankruptcy Rule 2002(l) to give supplemental publication notice of the Combined Hearing, or shortened version thereof, by publication in a newspaper or newspapers designated by the Debtors in their sole discretion and on a date no less than twenty-eight (28) days prior to the Combined Hearing.

10. Any objection to the assumption or rejection of executory contracts and unexpired leases must (a) be in writing; (b) conform to the applicable Bankruptcy Rules and Local Rules, (c) set forth the name of the objecting party, the basis for the objection, and the specific grounds thereof; (d) be filed with the Bankruptcy Court by the Objection Deadline, together with proof of service, and (e) served upon the Notice Parties.

11. The objection procedures in connection with the assumption or rejection of executory contracts and unexpired leases pursuant to the Prepackaged Plan are approved, as set forth in the Combined Notice.

12. The time within which the Debtors shall file the Schedules and Statements is extended through and including August 7, 2020 without prejudice to the Debtors' right to seek further extensions of the time within which to file the Schedules and Statements or to seek additional relief from this Court regarding the filing of, or waiver of the requirement to file, the Schedules and Statements.

13. The requirement that the Debtors file the Schedules and Statements is permanently waived effective upon the date of confirmation of the Prepackaged Plan, provided confirmation occurs on or before the SOAL/SOFA Deadline.

14. The U.S. Trustee shall not be required to schedule a meeting of creditors and equity holders pursuant to Bankruptcy Code section 341(a) and (b), unless the Prepackaged Plan is not confirmed in these chapter 11 cases on or before the SOAL/SOFA Deadline.

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15. Notwithstanding anything to the contrary herein or in the confirmation schedule set forth in the Motion, any holder of Claims in Class 3 and/or Class 4 that is a Consenting Creditor may revoke its vote at any time following the termination of the Restructuring Support Agreement with respect to such Consenting Creditor. Upon such revocation, such Consenting Creditor shall be entitled to submit a replacement vote so as to be received by KCC no later than 5:00 p.m. (prevailing Eastern Time) on the date that is seven (7) days following such revocation.

16. The Debtors are authorized to take all steps necessary or appropriate to carry out the relief granted pursuant to this Order in accordance with the Motion.

17. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware

7   
MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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**Exhibit 1**

**Combined Notice**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X	
In re:	: Chapter 11
	: Case No. 20- _____ ( )
SKILLSOFT CORPORATION, <i>et al.</i>	: (Joint Administration Requested)
	:
Debtors. <sup>1</sup>	:
	:
----- X	

**NOTICE OF (I) COMMENCEMENT OF CHAPTER 11 CASES,  
(II) COMBINED HEARING ON DISCLOSURE STATEMENT,  
CONFIRMATION OF JOINT PREPACKAGED CHAPTER 11  
PLAN, AND RELATED MATTERS, AND (III) OBJECTION DEADLINES,  
AND SUMMARY OF DEBTORS' JOINT PREPACKAGED CHAPTER 11 PLAN**

NOTICE IS HEREBY GIVEN as follows:

1. On June 14, 2020 (the "Petition Date") Skillsoft Corp. and its affiliated debtors, as debtors and debtors in possession (collectively, the "Debtors"), each commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

2. On the Petition Date, the Debtors filed a "prepackaged" plan of reorganization (the "Prepackaged Plan") and a proposed disclosure statement (the "Disclosure Statement") pursuant to sections 1125 and 1126(b) of the Bankruptcy Code. Copies of the Prepackaged Plan and the Disclosure Statement may be obtained free of charge by visiting the website maintained by the Debtors' voting agent, Kurtzman Carson Consultants LLC (the "Voting Agent" or "KCC"), at [www.kccllc.net/skillsoft](http://www.kccllc.net/skillsoft). Copies of the Prepackaged Plan and Disclosure Statement may also be obtained by calling the Voting Agent at 877-709-4752 (domestic hotline) 424-236-7232 (international hotline) or emailing the Voting Agent at [skillsoftinfo@kccllc.com](mailto:skillsoftinfo@kccllc.com).

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors' corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

**Information Regarding Prepackaged Plan**

3. On June 14, 2020, the Debtors commenced solicitation of votes to accept the Prepackaged Plan from the holders of Class 3 (First Lien Debt Claims) and Class 4 (Second Lien Debt Claims) of record as of June 12, 2020. Only holders of Claims in Class 3 and Class 4 are entitled to vote to accept or reject the Prepackaged Plan. All other classes of claims were either deemed to accept or reject the Prepackaged Plan and, therefore, are not entitled to vote. **The deadline for the submission of votes to accept or reject the Prepackaged Plan is June 26, 2020 at 5:00 p.m. (Prevailing Eastern Time).**

4. The Debtors are proposing a restructuring that, pursuant to the Prepackaged Plan, will provide substantial benefits to the Debtors and all of their stakeholders. Upon its full implementation, the Prepackaged Plan will reduce the Debtors' balance sheet liabilities from approximately \$2.1 billion in prepetition funded debt down to approximately \$585 million in funded debt. In addition to significantly de-levering the Debtors' balance sheet, the Debtors will emerge from chapter 11 with access to a new working capital facility that will provide sufficient liquidity to allow the Debtors to continue funding business operations. The restructuring will allow the Debtors' management team to focus on operational performance and value creation, execute on growth initiatives, and continue to serve as an international leader and innovator in the corporate learning market.

5. A combined hearing to consider the adequacy of the Disclosure Statement and any objections thereto and to consider confirmation of the Prepackaged Plan and any objections thereto will be held before the Bankruptcy Court, 824 North Market Street, Wilmington, Delaware, 19801, **on July 24, 2020 at 10:30 a.m. (Prevailing Eastern Time)** (the "**Combined Hearing**"). The Combined Hearing may be adjourned from time to time without further notice other than by filing a notice of the Bankruptcy Court's docket indicating such adjournment and/or announcement of the adjournment date or dates at the Combined Hearing. The adjourned dates will be available on the electronic case filing docket and the Voting Agent's website [www.kccllc.net/skillsoft](http://www.kccllc.net/skillsoft).

6. The deadline for filing objections to the adequacy of the Disclosure Statement or confirmation of the Plan is **July 17, 2020, at 4:00 p.m. (Prevailing Eastern Time)** (the "**Objection Deadline**"). Any objections to the Disclosure Statement and/or the Prepackaged Plan must be: (i) in writing, (ii) filed with the Clerk of the Court together with proof of service thereof, (iii) set forth the name of the objecting party, and the nature and amount of any claim or interest asserted by the objecting party against the Debtors' estates or property of the Debtors; and (iv) state the legal and factual basis for such objection, and (v) conform to the applicable Bankruptcy Rules and the Local Rules.

7. In addition to being filed with the Clerk of the Court, any such objections should be served upon the following parties in accordance with the Local Rules:

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***Debtors***

Skillsoft Corporation  
300 Innovative Way, Suite 201  
Nashua, New Hampshire, 03062  
Telephone: (866) 757-73177  
Attn: Greg Porto  
Email: greg.porto@skillsoft.com

***Proposed Counsel to the Debtors***

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Gary T. Holtzer, Esq.  
Robert J. Lemons, Esq.  
Katherine Theresa Lewis, Esq.  
Email: gary.holtzer@weil.com  
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**UNLESS AN OBJECTION IS TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AT THE COMBINED HEARING.**

**Notice of Assumption of Executory Contracts and Unexpired Leases of Debtors and Related Procedures**

8. Please take notice that, in accordance with Section 8.1 of the Plan and sections 365 and 1123 of the Bankruptcy Code, all Executory Contracts and Unexpired Leases shall be deemed assumed, including the Restructuring Support Agreement, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code (such contracts and leases, the “Assumed Contracts”), unless such Executory Contract and Unexpired Lease: (i) was assumed or rejected previously by the Debtors; (ii) previously expired or terminated pursuant to its own terms; (iii) is the subject of a motion to reject filed on or before the Effective Date; or (iv) is identified on the Rejected Executory Contract and Unexpired Lease List.

9. Any monetary amounts by which any executory contract or unexpired lease to be assumed under the Plan is in default (a “Cure Amount”) shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtors or Reorganized Debtors, as applicable, upon assumption thereof. If you believe that any Cure Amounts are due by the Debtors in connection with the assumption of your contract or unexpired lease, you should assert such Cure Amounts against the Debtors in the ordinary course of business.

10. To the extent that you object to the assumption of an Assumed Contract on any basis, including the Debtors’ satisfaction of the requirement under section 365(b)(1)(C) of the Bankruptcy Code to provide adequate assurance of future performance under an Assumed Contract, you must (a) file with the Bankruptcy Court a written objection (the “Objection”) no later than the Objection Deadline that complies with the Bankruptcy Rules and the Local Rules and sets forth (i) the basis for such objection and specific grounds therefor, and (ii) the name and contact information of the person authorized to resolve such objection, and (b) serve the same on the parties listed above.

11. If no Objection is timely filed with respect to an Assumed Contract, (a) you shall be deemed to have assented to (i) the assumption of such Assumed Contract, (ii) the effective date of such assumption, and (iii) the satisfaction of the requirement under section 365(b)(1)(C) of the Bankruptcy Code of the Debtors to provide adequate assurance of future performance under such Assumed Contract, and (b) you shall be forever barred, estopped, and enjoined from challenging the validity of such assumption or the adequate assurance of future performance contemplated herein.

12. The Debtors request that, before filing an Objection, you contact the Debtors prior to the Objection Deadline to attempt to resolve such dispute consensually. The

Handwritten signature or initials, possibly 'JPS', in black ink.

Debtors' contact for such matters is Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com), Robert J. Lemons, Esq. (robert.lemons@weil.com), and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com), Amada R. Steele, Esq. (steele@rlf.com) and Christopher M. De Lillo, Esq. (delillo@rlf.com)). If such dispute cannot be resolved consensually prior to the Objection Deadline (as the same may be extended by agreement of the Debtors), you must file and serve an Objection as set forth herein to preserve your right to object.

13. If a timely Objection is filed and served in accordance with this notice pertaining to assumption of an Assumed Contract, and cannot be otherwise resolved by the parties pursuant to Section 8.2 of the Prepackaged Plan, the Bankruptcy Court may hear such Objection at a date set by the Bankruptcy Court.

**Summary of the Prepackaged Plan**

14. Solicitation of votes on the Prepackaged Plan commenced prior to the Petition Date. The following chart summarizes the treatment provided by the Prepackaged Plan to each class of Claims and Interests:

Class	Claim or Equity Interest	Treatment	Impaired or Unimpaired	Entitlement to Vote on the Plan	Approx. Percentage Recovery <sup>2</sup>
Class 1	Other Priority Claims	The legal, equitable, and contractual rights of the holders of Allowed Other Priority Claims are unaltered by this Plan. Except to the extent that a holder of an Allowed Other Priority Claim agrees to different treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Other Priority Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter, each holder of an Allowed Other Priority Claim shall receive, on account of such Allowed Claim, at the option of the Reorganized Debtors (i) Cash in an amount equal to the Allowed amount of such Claim, (ii) such other treatment sufficient to render such holder's Allowed Other Priority Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code, or (iii) other treatment consistent with the provisions of section 1129 of the Bankruptcy Code.	Unimpaired	No (Deemed to accept)	Estimated Percentage Recovery: 100%
Class 2	Other Secured Claims	The legal, equitable, and contractual rights of the holders of Allowed Other Secured Claims are unaltered by this Plan. Except to the extent that a holder of an Allowed Other Secured Claim agrees to different	Unimpaired	No (Deemed to accept)	Estimated Percentage Recovery: 100%

<sup>2</sup> The values set forth under Approximate Percentage Recovery are based on the midpoint of the range of reorganized equity value of the Debtors as described in the Valuation Analysis set forth in this Disclosure Statement.

		treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Other Secured Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter, each holder of an Allowed Other Secured Claim shall receive, on account of such Allowed Claim, at the option of the Reorganized Debtors (i) Cash in an amount equal to the Allowed amount of such Claim, (ii) reinstatement or such other treatment sufficient to render such holder's Allowed Other Secured Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code, or (iii) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code.			
Class 3	First Lien Debt Claims	On the Effective Date, in full and final satisfaction, release, and discharge of the Allowed First Lien Debt Claims, the holders of Allowed First Lien Debt Claims (or the permitted assigns or designees of such holders) shall receive their Pro Rata share of: (i) New Second Out Term Loans; and (ii) 96% of Newco Equity (subject to dilution by the Warrants and the Incentive Plans.	Impaired	Yes	Estimated Percentage Recovery: 71%
Class 4	Second Lien Debt Claims	On the Effective Date, in full and final satisfaction, release, and discharge of the Allowed Second Lien Debt Claims, the holders of Allowed Second Lien Debt Claims shall receive their Pro Rata share of: (i) 4% of Newco Equity (subject to dilution by the Warrants and the Incentive Plans); (ii) the Tranche A Warrants; and (iii) the Tranche B Warrants.	Impaired	Yes	Estimated Percentage Recovery: 3% <sup>3</sup>
Class 5	General Unsecured Claims	The legal, equitable, and contractual rights of the holders of Allowed General Unsecured Claims are unaltered by this Plan. Except to the extent that a holder of an Allowed General Unsecured Claim agrees to different treatment, on and after the Effective Date, or as soon as reasonably practicable thereafter, the Debtors shall continue to pay or dispute each General Unsecured Claim in the ordinary course of business as if the Chapter 11 Cases had never been commenced.	Unimpaired	No (Deemed to accept)	Estimated Percentage Recovery: 100%
Class 6	Subordinated Claims	On the Effective Date, or as soon as practicable thereafter, all Subordinated Claims shall be deemed cancelled without further action by or order of the Bankruptcy Court, and shall be of no further force and effect, whether surrendered for cancellation or otherwise.	Impaired	No (Deemed to reject)	Estimated Percentage Recovery: 0%
Class 7	Intercompany Claims	On the Effective Date, all Intercompany Claims shall be reinstated, cancelled, reduced, transferred, or otherwise treated (by way of contribution to capital or otherwise), in each case at the Debtors' or Reorganized Debtors' option (with the consent of the Requisite Creditors), in accordance with the Restructuring Transaction Steps.	Impaired/ Unimpaired	No (Deemed to accept or reject)	Estimated Percentage Recovery: -

<sup>3</sup> Estimated percentage recovery excludes value attributable to warrants.

Class 8	Existing Parent Equity Interests	On the Effective Date, the entire share capital of Parent shall be transferred to Newco Borrower in accordance with the Restructuring Transaction Steps. Holders of Existing Parent Equity Interests shall receive no distribution under this Plan.	Impaired	No (Deemed to reject)	Estimated Percentage Recovery: 0%
Class 9	Other Equity Interests	On the Effective Date, Other Equity Interests shall be cancelled, released, and extinguished and shall be of no further force and effect.	Impaired	No (Deemed to reject)	Estimated Percentage Recovery: 0%
Class 10	Intercompany Interests	On the Effective Date, all Intercompany Interests shall be reinstated, modified, cancelled, or otherwise treated, in each case at the Debtors' or Reorganized Debtors' option (with the consent of the Requisite Creditors), in accordance with the Restructuring Transaction Steps.	Impaired/ Unimpaired	No (Deemed to accept or reject)	Estimated Percentage Recovery:

**Non-Voting Status of Holders of Certain Claims and Interests**

15. As set forth above, certain holders of Claims and Interests are **not** entitled to vote on the Prepackaged Plan. As a result, such parties did not receive any ballots and other related solicitation materials to vote on the Prepackaged Plan. The holders of Claims and Interests in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), and Class 5 (General Unsecured Claims) are unimpaired under the Prepackaged Plan, and therefore, are presumed to have accepted the Prepackaged Plan pursuant to section 1126(f) of the Bankruptcy Code. The holders of Claims and Interests in Class 6 (Subordinated Claims), Class 8 (Existing Parent Equity Interests), and Class 9 (Other Equity Interests) are not entitled to a recovery under the Prepackaged Plan, and therefore, are deemed to reject the Prepackaged Plan pursuant to section 1126(g) of the Bankruptcy Code. The holders of Claims and Interests in Class 7 (Intercompany Claims) and Class 10 (Intercompany Interests) are presumed to have accepted the Prepackaged Plan pursuant to section 1126(f) or presumed to reject the Prepackaged Plan pursuant to section 1126(g) of the Bankruptcy Code. Finally, parties to certain of the Debtors' executory contracts and unexpired leases may not have Claims pending the disposition of their contracts or leases by assumption or rejection under the Prepackaged Plan. Such parties nevertheless are being provided with this Combined Hearing Notice, and will be separately notified of the projected disposition of their contracts and/or lease. Upon request, the Voting Agent will provide you, free of charge, with copies of the Prepackaged Plan, the Disclosure Statement, and the Combined Hearing Notice.

**NOTICE REGARDING CERTAIN RELEASE, EXCULPATION AND INJUNCTION PROVISIONS IN THE PREPACKAGED PLAN**

PLEASE BE ADVISED THAT THE PREPACKAGED PLAN CONTAINS CERTAIN RELEASE, EXCULPATION AND INJUNCTION PROVISIONS, INCLUDING:

**Section 10.5 Injunction Against Interference with Plan**

Upon the entry of the Confirmation Order, all holders of Claims and Interests and all other parties in interest, along with their respective present and former affiliates, employees,

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agents, officers, directors, and principals, shall be enjoined from taking any action to interfere with the implementation or the occurrence of the Effective Date.

**Section 10.6 Plan Injunction**

(a) Except as otherwise provided in the Plan, in the Plan Documents, or in the Confirmation Order, as of the entry of the Confirmation Order but subject to the occurrence of the Effective Date, all Persons who have held, hold, or may hold Claims or Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, are permanently enjoined after the entry of the Confirmation Order from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting, directly or indirectly, a Debtor, a Reorganized Debtor, or an Estate or the property of any of the foregoing, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (i) or any property of any such transferee or successor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against a Debtor, a Reorganized Debtor, or an Estate or its property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (ii) or any property of any such transferee or successor, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against a Debtor, a Reorganized Debtor, or an Estate or any of its property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons mentioned in this subsection (iii) or any property of any such transferee or successor, (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan, and the Plan Documents, to the full extent permitted by applicable law, and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan and the Plan Documents.

(b) By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest shall be deemed to have affirmatively and specifically consented to be bound by the Plan, including the injunctions set forth in Section 10.6 of the Plan.

**Section 10.7 Releases**

(a) **Releases by Debtors.** Except as otherwise expressly provided in the Plan, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, including without limitation the efforts of the Released Parties to facilitate the reorganization of the Debtors and the implementation of the Restructuring contemplated by the Restructuring Support Agreement, on and after the Effective Date, to the maximum extent permitted by applicable law, the Debtors and the Estates are deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, and discharged each Released Party from, and covenanted not to sue on account of, any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities

whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims and avoidance actions, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place at any time prior to or on the Effective Date, arising from or related in any way in whole or in part to the Chapter 11 Cases, the Restructuring, the Evergreen Skills Entities, the Parent, the Company or any direct or indirect subsidiary of the Parent, the First Lien Credit Agreement, Second Lien Credit Agreement, any Credit Document (as defined in the Credit Agreements), the Existing AR Credit Agreement, the purchase, sale, or rescission of the offer, purchase or sale of any security of the Company, the subject matter of, or the transactions or events giving rise to, any claim against or equity interest in the Company that is treated hereunder, or the negotiation, formulation, or preparation of the Definitive Documents or related agreements, instruments, or other documents, in each case other than claims or liabilities arising out of a Released Party's own intentional fraud, gross negligence, or willful misconduct.

(b) **Releases by Holders of Claims or Interests.** Except as otherwise expressly provided in the Plan, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, including without limitation the efforts of the Debtors and Released Parties to facilitate the reorganization of the Debtors and the implementation of the Restructuring contemplated by the Restructuring Support Agreement, on and after the Effective Date, to the maximum extent permitted by applicable law, each Releasing Party shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, and discharged each Released Party from, and covenanted not to sue on account of, any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims and avoidance actions, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place at any time prior to or on the Effective Date, arising from or related in any way in whole or in part to the Chapter 11 Cases, the Restructuring, the Evergreen Skills Entities, the Parent, the Company or any direct or indirect subsidiary of the Parent, the First Lien Credit Agreement, Second Lien Credit Agreement, any Credit Document (as defined in the Credit Agreements), the Existing AR Credit Agreement, the purchase, sale, or rescission of the offer, purchase or sale of any security of the Company, the subject matter of, or the transactions or events giving rise to, any claim against or equity interest in the Company that is treated hereunder, or the negotiation, formulation, or preparation of the Definitive Documents or related agreements, instruments, or other documents, in each case other than claims or liabilities arising out of a Released Party's own intentional fraud, gross negligence, or willful misconduct. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any First Lien Lender, Second Lien Lender, or DIP Lender from its respective obligations to the First Lien Agent, the Second Lien Agent, or the DIP Agent (and their respective successors, agents, and servants), as the case may be, under the applicable Credit Agreements or the DIP Credit Agreement.

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**Section 10.8 Exculpation**

To the fullest extent permitted by applicable law, no Exculpated Party shall have or incur, and each Exculpated Party shall be released and exculpated from, any claim or Cause of Action in connection with or arising out of the administration of the chapter 11 cases; the negotiation and pursuit of the DIP Facility, the New First Out Term Loan Facility, the New Second Out Term Loan Facility, the Exit AR Facility, the Warrants, the Incentive Plans, this Disclosure Statement, the Restructuring Supporting Agreement, the Restructuring, and the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan or the property to be distributed under the Plan; the issuance of securities under or in connection with the Plan; the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors; or the transactions in furtherance of any of the foregoing; other than claims or Causes of Action arising out of or related to any act or omission of an Exculpated Party that is a criminal act or constitutes intentional fraud or willful misconduct as determined by a Final Order. In all respects the Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of securities pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan, including the issuance of securities thereunder. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

**Section 10.9 Injunction Related to Releases and Exculpation.**

The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, or liabilities released pursuant to the Plan, including, without limitation, the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities released or exculpated in the Plan or the Confirmation Order.

**Relevant Definitions Related to Release and Exculpation Provision:**

***Exculpated Parties*** means, collectively, and in each case in their capacities as such during the Chapter 11 Cases, (i) the Debtors, (ii) the Reorganized Debtors, (iii) any statutory committee appointed in the Chapter 11 Cases, (iv) the First Lien Agent, (v) the Second Lien Agent, (vi) CIT Bank, N.A., (vii) the Ad Hoc First Lien Group and its current and former members, (viii) the Ad Hoc Crossholder Group and its current and former members, (ix) the DIP Lenders; (x) the DIP Agent; (xi) the DIP Escrow Agent, (xii) with respect to each of the foregoing Persons

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in clauses (i) through (xi), such Persons' predecessors, successors, assigns, subsidiaries, affiliates, managed accounts and funds, and all of their respective current and former officers and directors, principals, equity holders, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, investment managers, investment advisors, management companies, fund advisors, and other professionals, and such Persons' respective heirs, executors, estates, and nominees, in each case in their capacity as such, *provided however* notwithstanding the foregoing, if the Sponsor Side Agreement is not in effect on the Effective Date, the definition of Exculpated Party shall not include, in each case, regardless of whether such party or entity would otherwise meet the definition of Exculpated Party: (x) the Sponsor; (y) the Evergreen Skills Entities; or (z) with respect to each of the foregoing (x)-(y), their respective current and former affiliates (other than the Company), subsidiaries (other than the Company), members, managers, equity owners, employees, professionals, consultants, directors and officers (in each case solely in their respective capacities as such.

***Released Parties*** means, collectively, (i) the Debtors, (ii) the Reorganized Debtors, (iii) the First Lien Agent, (iv) the Second Lien Agent, (v) CIT Bank, N.A., (vi) the Ad Hoc First Lien Group and its current and former members, (vii) the Ad Hoc Crossholder Group and its current and former members, (viii) the DIP Lenders; (ix) the DIP Agent; (x) the DIP Escrow Agent, (xi) with respect to each of the foregoing Persons in clauses (i) through (x), such Persons' predecessors, successors, assigns, subsidiaries, affiliates, managed accounts and funds, and all of their respective current and former officers and directors, principals, equity holders, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, investment managers, investment advisors, management companies, fund advisors, and other professionals, and such Persons' respective heirs, executors, estates, and nominees, in each case in their capacity as such, and (xii) the Sponsor, the Evergreen Skills Entities, and Sponsor Affiliates; *provided that* releases of the Evergreen Skills Entities shall not be effective until such time as is consistent with the Restructuring Transaction Steps; *provided further that*, notwithstanding any of the foregoing, if a Sponsor Material Breach has occurred or if the Sponsor Side Agreement has been terminated for any reason other than the occurrence of the Effective Date then the Sponsor, the Evergreen Skills Entities, and the Sponsor Affiliates shall not be Released Parties.

**YOU ARE ADVISED AND ENCOURAGED TO CAREFULLY REVIEW AND CONSIDER THE PREPACKAGED PLAN, INCLUDING THE RELEASE, EXCULPATION AND INJUNCTION PROVISIONS, AS YOUR RIGHTS MIGHT BE AFFECTED.**



**Section 341(a) Meeting**

16. A meeting of creditors pursuant to section 341(a) of the Bankruptcy Code (the "Section 341(a) Meeting") has been deferred. **The Section 341(a) Meeting will not be convened if the Plan is confirmed by August 7, 2020.** If the Section 341(a) Meeting will be convened, the Debtors will file, serve on the parties on whom it served this notice and any other parties entitled to notice pursuant to the Bankruptcy Rules, and post on the website at [www.kccllc.net/skillsoft](http://www.kccllc.net/skillsoft) not less than twenty-one (21) days before the date scheduled for such meeting, a notice of, among other things, the date, time, and place of the Section 341(a) Meeting. The meeting may be adjourned or continued from time to time by notice at the meeting, without further notice to creditors.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2020

BY ORDER OF THE COURT

**WEIL, GOTSHAL & MANGES LLP**  
Gary T. Holtzer (pro hac vice admission pending)  
Robert J. Lemons (pro hac vice admission pending)  
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Facsimile: (302) 651-7701

*Proposed Counsel for the Debtors  
and Debtors in Possession*

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**Schedule "M"**

*Order (I) Authorizing the Debtors to (A) Enter into an Exclusivity Letter with the Interested Party, and (B) Perform their Obligations thereunder, Including Payment of the Upfront Payment Amount, and (II) Granting Related Relief*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
In re: :  
: Chapter 11  
: SKILLSOFT CORPORATION, *et al.* :  
: Case No. 20-11532 (MFW)  
: Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
: Re: D.I. 34  
----- X

**ORDER (I) AUTHORIZING THE DEBTORS TO (A) ENTER INTO  
AN EXCLUSIVITY LETTER WITH THE INTERESTED PARTY, AND  
(B) PERFORM THEIR OBLIGATIONS THEREUNDER, INCLUDING PAYMENT OF  
THE UPFRONT PAYMENT AMOUNT, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of Skillsoft Corporation (“Skillsoft”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, for entry of an order (i) authorizing, but not directing, the Debtors to (a) enter into the Exclusivity Letter with the Interested Party, and (b) perform their obligations thereunder, including paying the Upfront Payment Amount on the terms and conditions in the Exclusivity Letter, and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to those terms in the Motion.

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§§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Rule 6003 of the Federal Rules of Bankruptcy Procedure, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted to the extent set forth herein.
2. The Debtors are authorized, but not directed, to enter into the Exclusivity Letter with the Interested Party and to perform their obligations thereunder, including paying the Upfront Payment Amount subject to the terms and conditions of the Exclusivity Letter.
3. The requirements of Bankruptcy Rule 6003(b) have been satisfied.
4. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

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5. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

7. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware



MARY F. WALRATH  
3 UNITED STATES BANKRUPTCY JUDGE

895

**Schedule "N"**

*Order Authorizing the Debtors to File Under Seal and Redact Certain Identity Information in  
the Motion to Enter into Exclusivity Letter*

*(See attached)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- x  
In re: :  
: Chapter 11  
: :  
SKILLSOFT CORPORATION, *et al.* : Case No. 20-11532 (MFW)  
: :  
Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
: Re: D.I. 36  
----- x

ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL  
AND REDACT CERTAIN IDENTITY INFORMATION IN THE  
MOTION TO ENTER INTO EXCLUSIVITY LETTER

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) and 107(b) and (c) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) authorizing the Debtors to file under seal and to redact certain portions of the Exclusivity Letter Motion containing the Commercial Information, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and upon the First Day Declaration and the record of the hearing; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted to the extent set forth herein.
2. The Debtors are authorized pursuant to sections 105 and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1 to file the Exclusivity Letter Motion under seal and to redact the Commercial Information in the publicly-filed versions of the Exclusivity Letter Motion. The Commercial Information shall be filed under seal, shall remain confidential, and shall not be made available to anyone, other than as provided in Paragraph 3 of this Order, absent further order of this Court.
3. In accordance with Local Rule 9018-1, the Debtors shall provide the un-redacted version of the Exclusivity Letter Motion to the Court and on a confidential, professional eyes' only basis to: (i) the U.S. Trustee; (ii) counsel to any statutory committee appointed in these



chapter 11 cases; (iii) counsel to the Ad Hoc First Lien Group; and (iv) counsel to the Ad Hoc Crossholder Group.

4. Any party authorized, pursuant to this Order, to receive a copy of the un-redacted Exclusivity Letter Motion, other than the Court or the U.S. Trustee, (a) shall confirm to the Debtors (which confirmation may be made via electronic email), prior to receiving a copy of the un-redacted Exclusivity Letter Motion, that such party is bound by the terms of this Order and shall at all times keep the Commercial Information strictly confidential and shall not disclose the un-redacted Exclusivity Letter Motion or the Commercial Information (or the contents thereof) to any party whatsoever or (b) in the alternative, shall abide by any applicable non-disclosure or confidentiality agreement.

5. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware

  
MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Schedule "O"**

*Order pursuant to 11 U.S.C. §§ 105 and 107, FED. R. BANKR. P. 9018, and DEL. BANKR. L.R. 9018-1 authorizing the Debtors to File the Proposed Debtor-In-Possession Financing Fee Letters Under Seal*

*(See attached)*

1095

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF DELAWARE**

----- x  
**In re:** :  
 : **Chapter 11**  
 :  
**SKILLSOFT CORPORATION, et al.** : **Case No. 20- 11532 (MFW)**  
 :  
**Debtors.<sup>1</sup>** : **(Jointly Administered)**  
 :  
 : **Re: D.I. 32**  
 ----- x

**ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 107, FED. R. BANKR. P. 9018, AND  
 DEL. BANKR. L.R. 9018-1 AUTHORIZING THE DEBTORS TO FILE THE  
 PROPOSED DEBTOR-IN-POSSESSION FINANCING FEE LETTERS UNDER SEAL**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) and 107(b) and (c) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) authorizing the Debtors to file under seal and to redact certain portions of the Fee Letters, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

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and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and upon the First Day Declaration and the record of the hearing; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted to the extent set forth herein.
2. The Debtors are authorized pursuant to sections 105 and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, to file those certain portions of the Fee Letters containing Commercial Information under seal and to redact such Commercial Information in the Fee Letters. The Commercial Information shall be filed under seal, shall remain confidential, and shall not be made available to anyone, other than as provided in Paragraph 3 of this Order, without further order of this Court.
3. In accordance with Local Rule 9018-1, the Debtors shall provide un-redacted versions of the Fee Letters to the Court and shall provide an un-redacted version of the Fee Letters to the Receiving Parties on a confidential, "professionals' eyes only" basis.

4. Any party authorized, pursuant to this Order, to receive a copy of the un-redacted Fee Letters, other than the Court or the Office of the United States Trustee for the District of Delaware, (a) shall confirm to the Debtors (which confirmation may be made via electronic email), prior to receiving a copy of the un-redacted Fee Letters, that such party is bound by the terms of this Order and shall at all times keep the Commercial Information strictly confidential and shall not disclose the un-redacted Fee Letters or the Commercial Information (or the contents thereof) to any party whatsoever or (b) in the alternative, shall abide by any applicable non-disclosure or confidentiality agreement.

5. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: June 16th, 2020  
Wilmington, Delaware

  
MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Schedule "P"**

*Interim Order Pursuant to 11 U.S.C. Sections 105 and 107, Fed. R. Bankr. P. 9018 and Del. Bankr. L.R. 9018-1 Authorizing the Debtors to File (I) Portions of the Creditor Matrix Under Seal and (II) the Commercial Information and the Personal Information in Future Filings Under Seal*

895

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----		x
<b>In re:</b>	:	
	:	<b>Chapter 11</b>
	:	
<b>SKILLSOFT CORPORATION, et al.</b>	:	<b>Case No. 20-11532 (MFW)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
	:	<b>Re: D.I. 8</b>
-----		x

**INTERIM ORDER PURSUANT TO  
11 U.S.C. §§ 105 AND 107, FED. R. BANKR. P. 9018  
AND DEL. BANKR. L.R. 9018-1 AUTHORIZING THE  
DEBTORS TO FILE (I) PORTIONS OF THE CREDITOR  
MATRIX UNDER SEAL AND (II) THE COMMERCIAL INFORMATION  
AND THE PERSONAL INFORMATION IN FUTURE FILINGS UNDER SEAL**

Upon the motion (the “**Motion**”)<sup>2</sup> of Skillsoft Corporation (“**Skillsoft**”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) and 107(b) and (c) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) authorizing the Debtors to file under seal and to redact (a) certain

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Skillsoft Corporation (6115); Amber Holding Inc. (0335); SumTotal Systems LLC (7228); MindLeaders, Inc. (6072); Accero, Inc. (4684); CyberShift Holdings, Inc. (2109); CyberShift, Inc. (U.S.) (0586); Pointwell Limited; SSI Investments I Limited; SSI Investments II Limited; SSI Investments III Limited; Skillsoft Limited; Skillsoft Ireland Limited; ThirdForce Group Limited; Skillsoft U.K. Limited; and Skillsoft Canada, Ltd. The location of the Debtors’ corporate U.S. headquarters is 300 Innovative Way, Suite 201, Nashua, NH 03062.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

*JCB*

portions of their Creditor Matrix containing the Commercial Information and/or the Personal Information and (b) certain portions of future filings containing the Commercial Information and/or the Personal Information, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and upon the First Day Declaration and the record of the hearing; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105 and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1 to file those portions of the Sealed Documents containing Commercial Information and/or Personal Information under seal and to redact such Commercial Information and/or Personal Information in the publicly-filed versions of the Sealed Documents. The Commercial Information and the Personal Information shall be filed under seal, shall remain confidential, and shall not be made available to anyone, other

hgs



than as provided in Paragraph 3 of this Interim Order, without further order of this Court; *provided*, that any customer name and address that is otherwise made publicly available in connection with a pleading in this Court or on the Company's website shall not be deemed Commercial Information.

3. In accordance with Local Rule 9018-1, the Debtors shall provide un-redacted versions of the Sealed Documents on a confidential basis to the Court, the U.S. Trustee, and counsel to any statutory committee appointed in these chapter 11 cases.

4. The Debtors and any party authorized to receive copies of the un-redacted Sealed Documents and the Commercial Information and the Personal Information contained therein pursuant to this Interim Order shall be authorized and directed, subject to Local Rule 9018-1(d) and (e), to (a) redact specific references to the Commercial Information and the Personal Information from pleadings and other documents filed on the public docket maintained in these chapter 11 cases, and (b) not use or refer to any Commercial Information and Personal Information in any hearing without first consulting with the Debtors and the Court as to how to make use of such Commercial Information and Personal Information at the hearing while maintaining its confidentiality; *provided, however*, that nothing in this Interim Order shall authorize the Debtors or any other party to seal or redact information in any retention application filed in these chapter 11 cases, absent further order of the Court.

5. Nothing in this Order shall waive or otherwise limit the service of any document upon or the provision of any notice to any individual whose Personal Information is sealed or redacted pursuant to this Interim Order or any final order on the Motion. Service of all documents and notices upon individuals whose Personal Information is sealed or redacted pursuant to this Order shall be confirmed in the corresponding certificate of service. The Debtors shall

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provide the Personal Information to any party in interest that files a motion that indicates the reason such information is needed and that, after notice and a hearing, is granted by the Court.

6. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **July 7, 2020, at 2:00 p.m. (prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing and filed with the Court by **June 30, 2020 at 4:00 p.m. (prevailing Eastern Time)**, and served in accordance with Local Rules 5005-4 and 9036-1 upon the following parties: (i) the proposed attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com); Robert J. Lemons, Esq. (robert.lemons@weil.com); and Katherine Theresa Lewis, Esq. (katherine.lewis@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 910 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com)); and (ii) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg, Esq. (sgreenberg@gibsondunn.com) and Christina M. Brown, Esq. (christina.brown@gibsondunn.com)), (iii) counsel to the Ad Hoc Crossholder Group, Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq. (efleck@milbank.com), Benjamin M. Schak, Esq. (bschak@milbank.com), and Sarah Levin, Esq. (slevin@milbank.com)) and (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Jane Leamy, Esq. (jane.m.leafy@usdoj.gov)).

7. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Interim Order.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.



5 MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

Dated: June 17th, 2020  
Wilmington, Delaware

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**Schedule "Q"**

**Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency  
Matters issued by the Judicial Insolvency Network**

*(See attached)*

**GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN  
COURTS IN CROSS-BORDER INSOLVENCY MATTERS**

**INTRODUCTION**

- A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (“Parallel Proceedings”) by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.
- B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.
- C. In particular, these Guidelines aim to promote:
- (i) the efficient and timely coordination and administration of Parallel Proceedings;
  - (ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders’ interests are respected;
  - (iii) the identification, preservation, and maximisation of the value of the debtor’s assets, including the debtor’s business;
  - (iv) the management of the debtor’s estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;
  - (v) the sharing of information in order to reduce costs; and
  - (vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties<sup>1</sup> in Parallel Proceedings.
- D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit<sup>2</sup>.
- E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.
- F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

<sup>1</sup> The term “parties” when used in these Guidelines shall be interpreted broadly.

<sup>2</sup> Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

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## ADOPTION & INTERPRETATION

**Guideline 1:** In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, “administrator” includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

**Guideline 2:** Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order<sup>3</sup>, following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

**Guideline 3:** Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

**Guideline 4:** These Guidelines when implemented are not intended to:

- (i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;
- (ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;
- (iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or
- (iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

**Guideline 5:** For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

**Guideline 6:** In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

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<sup>3</sup> In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

## COMMUNICATION BETWEEN COURTS

**Guideline 7:** A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

- (i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.
- (ii) Directing counsel to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.
- (iii) Participating in two-way communications with the other court, in which case Guideline 8 should be considered.

**Guideline 8:** In the event of communications between courts, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

- (i) In the normal case, parties may be present.
- (ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications and the communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.
- (iii) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.
- (iv) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

**Guideline 9:** A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable in the court.

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## **APPEARANCE IN COURT**

**Guideline 10:** A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

**Guideline 11:** If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

## **CONSEQUENTIAL PROVISIONS**

**Guideline 12:** A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

**Guideline 13:** A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

**Guideline 14:** A protocol or order made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

## **ANNEX A (JOINT HEARINGS)**

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.



**ANNEX A: JOINT HEARINGS**

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

- (i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.
- (ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.
- (iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.
- (iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.
- (v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.
- (vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.
- (vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.